Mr. McDaniel

VIEW

OF

THE LAND LAWS

OF

PENNSYLVANIA.

"I hold every man a debtor to his profession; from the which, as men of course do seek to receive countenance and profit, so ought they of duty to endeavour themselves, by way of amends, to be a help and ornament thereto."—*Lord Bacon. Maxims of the Law, Preface.*

"Et professioni meæ pluris me agnosco debitorem, quam quod omnes mei exantlati pariter ac fideles retribuere quæant labores."—9 *Rep., Preface.*

VIEW

OF

THE LAND LAWS

OF

PENNSYLVANIA.

WITH

NOTICES OF ITS EARLY HISTORY AND LEGISLATION.

BY

THOMAS SERGEANT, ESQ.

PHILADELPHIA:
JAMES KAY, JUN. AND BROTHER, 122 CHESTNUT STREET.
PITTSBURGH: JOHN I. KAY & CO.
1838.

Day
HD1156
P4S4

2102

Entered according to the act of congress, in the year 1838, by James Kay, Jun. & Brother, in the office of the clerk of the district court of the United States in and for the eastern district of Pennsylvania.

Printed and Bound by
JAMES KAY, JUN. & BROTHER,
122 Chestnut Street.

PREFACE.

To the advancement of the science of law, treatises on its different branches seem indispensable. If they are not of the most finished kind, nor always to be relied on as authorities, yet by connecting together scattered principles and cases, they shed upon it the light of order and arrangement, without which no science can easily be taught or understood. They also exceedingly abridge the toil of those engaged in the administration of justice, and the application of the law to particular cases that arise. Many branches of jurisprudence peculiar to Pennsylvania have now grown up under her own system, and are extending themselves with the increase of population: and it is perhaps to be wished that more of the profession were willing to contribute a portion of their time and labour to the payment of that debt which both Lord Coke and Lord Bacon thought every one owed to his profession, and in discharge of which they, with numerous others before and since their age, have promoted and adorned the laws of England.

If these observations are applicable to any part of our jurisprudence, they are peculiarly so to our land laws, which, notwithstanding they form the basis of our titles, and are continually subjects of litigation and discussion in courts of justice, have been suffered to remain rather an anomalous mass, by no means inviting in its character or easy to acquire a knowledge of. In the times of the proprietaries, the land office was said by the legislature to be pretty much of a mystery. This is not to be wondered at, when it is considered that the grants of lands and confirmations of titles were matters in the breasts of the proprietaries and their officers, who disposed of their territory according to their own will and pleasure, professedly by formal methods, but frequently by informal modes and agreements of their own, varying with the expediency of the times, or the change of officers, or special influences. The prices, and the terms and conditions of sale were altered with new occasions, or the acquisition of additional tracts of territory from the natives. The rules which applied to one purchase were partially superseded by new rules prescribed for others, and thus different systems were in operation at the same time, in different portions of the province. Title by settlement or improvement was at first discountenanced, and ultimately recognised. After the commonwealth succeeded to the right of dominion, it was their policy to preserve this system as it existed;

and indeed, without so doing, great embarrassment and distress would have ensued. But the purchases made by them were also subjected, in some measure, to new rules and regulations as to the terms and modes of acquiring vacant land. These were again varied from time to time with the alterations of public policy. The organization of the land office and the powers and duties of the departments were also changed. So that it has become no easy task to acquire a knowledge of these various systems; and among the profession it may be considered as adequately understood only by those who practise in those parts of the state where disputes on titles resting on warrants, surveys, locations, settlements and other matters connected therewith, are of frequent recurrence.

And this has happened partly from the deficiency of those labours in simplifying and illustrating this branch of the law which are necessary to its improvement, and partly to the intrinsic difficulty of reducing a subject to general rules, in which the exceptions are so numerous. Each case seemed to have an equity of its own, and the common law learning of Coke or Blackstone was of little use in the doctrines of our primitive titles to land, derived from warrants and other inchoate modes of acquiring titles, whose construction and operation were governed rather by the usages of the land office and the acts of assem-

bly, and the peculiar vigilance of parties, than by the learning usually accessible to the jurist.

The only effort that has been made to bring into one view the history of land affairs under the proprietaries, and the acts of assembly since the revolution, together with the decisions of the courts, is the note of the late CHARLES SMITH, Esq., to the second volume of his edition of the Laws of Pennsylvania, published under the authority of the legislature of Pennsylvania. This note contains a collection of most valuable materials; the industry and research of the learned editor having brought to light many important documents and facts that had lain buried in the archives of the land office, almost useless to those of the public who were interested in the study or use of our system of land laws. It also presented, for the first time, the manuscript notes of the late Judge YEATES of the decisions of the supreme court of this state on that subject, which have been always esteemed of high value, from the eminent abilities of that learned judge, and his special acquaintance with the course of land laws before the revolution as well as after; and which, with others, have been since published in his Reports. To the learned and accurate note of Mr Smith, every one who has to deal with our land laws must become indebted: nor can any one expect to attain an acquaintance with them, without

the careful study of it. In the following work, it has been constantly referred to. At the same time it may be observed, that it is now almost thirty years since it was published, and during that time, many disputed points have been settled by our courts, and much light thrown on the whole doctrine by the learning of the bench and the bar. Besides which, it admits of improvement in method; the time of the learned writer being sufficiently occupied with collecting and bringing together the various materials from their recesses, without the opportunity of giving to them that order and finish which would have been desirable.

The following endeavour to supply, in some degree, this deficiency, though by no means what is to be wished, may perhaps afford facilities to the student, as well as others, in respect to the elementary principles of the land laws. The principal materials were collected some years ago, and have been now revised. Their accuracy cannot be vouched for, though considerable pains have been taken to render them correct. It is probable that, in many points of view, the writer's impressions may be imperfect, and require further examination and reflection, especially as his course of professional studies has not led him into any peculiar acquaintance with the land laws, compared with that which others have possessed. Nor is any

thing more than an outline or sketch designed, touching upon the prominent and leading points, and aiming to simplify the subject, so as to assist further research in those who may be attracted to it. This general map must be filled up by a resort to the details to be found in other books, especially the notes of Mr Smith, and the acts of the legislature and reports of decisions since. Of its importance no one can doubt. No Pennsylvanian lawyer can consider himself qualified to undertake the high responsibilities to which his profession subjects him, without some acquaintance with a branch of learning, intimately connected with the institutions of his own state, one on which rests the foundation of our titles to real property, and in relation to which disputes are occurring, and must for a long period continue to occur, of great magnitude and interest among our citizens. There are others, who as public officers, legislators, or otherwise, are called on to act in relation to this subject, or feel an interest in learning something of its principal features, if not of its minute details.

The course of inquiry has led into the consideration of some other topics of the early legislation and history of the province which seemed interesting. In that portion which relates to its legislation, considerable difficulty is experienced from the want of the laws passed during the life time of the first proprie-

taries. For although all the laws that were passed prior to the year 1700 were then repealed, and most of those afterwards passed have been superseded, some by the legislature, and others by the crown of England; yet they formed the origin of many existing principles and usages in our jurisprudence, and are often essential to a proper understanding of our legal history, and even to the satisfactory interpretation of some parts of our present law. Many of these statutes were in force for a time; and, when repealed, were supplied by new ones on the same subject, with gradual alterations. And a comparison of all is requisite properly to comprehend the design of the later legislation, and to explain doctrines that grew up while those early laws subsisted. The writer has presumed to suggest the printing of these laws, as a work that deserves the legislative care, and would prove very serviceable to those engaged in the investigation of legal or constitutional questions agitated in the community, or in the administration of justice. The acts of our legislature from the year 1700 are, it is believed, recorded in the books of the secretary of the commonwealth, at Harrisburg, but not those previous. Nor are there to be found at the seat of government the rolls or copies of them. Most, if not all of them are, however, extant in private hands, and may yet be preserved from the probable loss that seems to await them. These have been occasionally used in the present treatise.

For the light thrown on the early history and colonization of the province, we are much indebted to the labours of several of our citizens, who, by contributions to the Historical Society of Pennsylvania, or otherwise, have bestowed their time and attention in illustrating our early history. Among whom may be mentioned the names of Mr Duponceau, the late Mr Rawle, Mr Watson, Mr Gordon, Mr Dunlop, Mr Wharton, Mr Tyson, Mr Barker and Mr Fisher. Mr Samuel Hazard has aided those who feel an interest in the primitive history of Pennsylvania, by publishing, in his Historical Register, many valuable documents, especially those relating to the Dutch and English titles before William Penn, and also by furnishing translations of important portions of the correspondence between the ministry of the crown of Sweden, and their governors and officers here, and of other state papers, the originals of which, in the Swedish and German language, were procured in Sweden by the late Jonathan Russell, Esq., and afterwards deposited by him in the library of the American Philosophical Society, at Philadelphia. They constitute a valuable addition to the stock of materials of the history of the earliest period of our state, and of the sources of its settlement and colonization. They afford the means of connecting together the whole history of the modes of disposing of land, from the earliest times, by the

Swedes first, and afterwards by the Dutch and English, prior to the arrival of William Penn; and though the materials are few, they are satisfactory, in showing the uniformity of the methods of proceeding from an early date, and in accounting, in some measure, for the origin of our usages and practice. These antiquities (if they can now be so called) excite an interest in themselves, independent of their importance to those engaged in the legal study and profession.

Philadelphia, February 1838.

CONTENTS.

CHAPTER.....I. Titles before William Penn's arrival, - - 17

II. Indian Purchases, - - - - - 27

III. Titles under William Penn, - - - 33

IV. From the death of William Penn in 1718, to the arrival of Thomas Penn in 1732, - - 38

V. Under John, Thomas and Richard Penn, sons of William Penn, - - - - 45

VI. Titles in 1765, - - - - 55

VII. Titles in 1768, - - - - - 61

VIII. Devesting Act of 1779, - - - 66

IX. Titles under the Commonwealth from 1779 to 1784, - - - - - - 70

X. Commencement of Sales by Commonwealth under Act of 1st April 1784, - - - 74

XI. Fair Play Men, - - - - - 77

XII. New Purchase at Fort M'Intosh in 1784—1785, 81

XIII. Act of 3d April 1792, - - - 91

XIV. Forms of Warrants, - - - - 112

XV. Warrants and Locations, descriptive or not, - 116

XVI. Surveys, - - - - - 121

XVII. Change of Survey, - - - - 130

XVIII. Returns of Survey, - - - - 132

XIX. Improvement or Settlement, - - 136

XX. Nature of the Property held by Warrant, &c. - 150

XXI. What Lands may be taken up as Vacant, - 152

CHAPTER.....XXII. Patents, - - - - - - 155
XXIII. Prices of Lands, - - - 157
XXIV. Purchase-Money, - - - - 160
XXV. Laches in pursuit of Claim, - - 164
XXVI. Land Office and Board of Property, - 168
XXVII. Ten per cent and other Surplus, - 179
XXVIII. Six per cent Allowance for Roads, &c., - 184
XXIX. Quit-Rents, - - - - 189
XXX. Rivers and Islands, - - - 191
XXXI. Manors, - - - - 195
XXXII. Tenures, - - - - - 198
XXXIII. Showing Title out of the Commonwealth, 202
XXXIV. Tax Sales, - - - - 208
XXXV. City of Philadelphia, - - - 224
XXXVI. Recording Acts, - - - - 230
Mortgages, - - - 249

APPENDIX.....I. Colonization before Penn, - - - 253
II. Instructions to Deputy Surveyors in 1701, 264
III. Instructions to Deputy Surveyors in 1765, - 267
IV. Prices of Lands, - - - 273
V. Certificates and Affidavits on applying for Land, - - - - - 277
VI. Forms of Warrants, - - - 280

CHAPTER I.

TITLES BEFORE WILLIAM PENN'S ARRIVAL.

The English, by Cabot's voyage along our coast in 1498, acquired the title of first discoverers.

In 1609, Hudson, in the employ of the Dutch East India Company, discovered Delaware Bay. Mey, also a Dutch commander, ascended the Delaware river in 1623, and built fort Nassau, on the eastern side, near Gloucester, but soon afterwards abandoned it. In 1629 and 1630, purchases were made, on both sides of the river from Cape Henlopen upwards as high as Bombay Hook, of the natives, in behalf of Goodyn, one of a Dutch company called the Amsterdam Association. In 1631, De Vries, an experienced navigator and co-proprietor in the Association, arrived from Amsterdam, and built a fort near Lewistown (state of Delaware), called Hoernekill, and left there a colony. In 1632, he arrived a second time, and found the colony exterminated by the Indians. No further attempts to settle were made by the Dutch till after 1638.

That year is the epoch at which the Swedes laid the foundations of more extensive and permanent set-

tlements along the river. Minuit, formerly the Dutch governor at New Netherlands (New York), brought out a Swedish expedition in two vessels, under the auspices of Christina, queen of Sweden. These colonists ascended the Delaware, opened communications with the natives, and purchased the soil of the western shore from Cape Henlopen to the falls at Sankikan (opposite Trenton), naming the country New Sweden. They erected a fort at the present Christine creek, and called it Christina, after the queen of Sweden. In about three years Minuit died there. He was succeeded in 1642 by Printz, who resided twelve years at Tinicum island, called by him New Gottenburg. Printz brought with him the clergyman Campanius, and a small colony. In 1643, the queen of Sweden, by patent, granted him the island. Besides Christina and Tinicum, the Swedes had settlements or forts at Elsinborgh (near Salem), Swedesborough, Upland (now Chester), Manayunk (mouth of Schuylkill), Wiccacoa (now Passyunk), Shackamaxon (now Kensington), and elsewhere. Three Swedes subsequently owned the tract including the present site of Philadelphia, which they exchanged with William Penn for a tract in the liberties near the city containing 820 acres.

During this period, the Dutch at New York were not idle, but persisted in their prior claim. They sent to Minuit a protest against his proceedings, reclaimed the Hoernekill settlement, repossessed fort Nassau, and in 1642, by an expedition from New

York, drove from the Schuylkill a colony seated under Lord Baltimore's patent, and joined the Swedes in expelling from Elsinborgh a small settlement which had been made by the English. At length, in 1651, they built fort Casimir (Newcastle). This approximation irritated the Swedes, and Risingh, successor of Printz, made himself master of the fort. In 1654, the Dutch retaliated. An expedition, planned by Governor Stuyvesant at New York, subdued Christina, and the whole of the Swedish settlements immediately fell under the power of the Dutch. They were termed by them the South River of the New Netherlands.

In 1664 another change occurred, by which these settlements were transferred to the English. Charles II., in assertion of the English title, granted to his brother the Duke of York the territory possessed by the Dutch in the New Netherlands, and Governor Nichols, acting under his authority, occupied by force New York and its dependencies, and sent an expedition, under the command of Carr, which reduced the Dutch settlements in Delaware bay and river. The treaty of Breda, in 1667, confirmed them to the English; and they remained under the jurisdiction of the British governors at New York until 1682, when the province of Pennsylvania and the territories (now the state of Delaware) were surrendered to William Penn at his arrival.

The Swedish grants, so far as we have copies of

them, appear to have emanated from the crown of Sweden, and are, sometimes, for services rendered or to be rendered: as, for instance, to Governor Printz, of the island of Tinicum; to Captain Besh, of a tract at Marcus Hook; to lieutenant Swen Schute, a tract in Kingsessing. Other grants were of a different complexion. In 1640 a company, which intended to settle a new colony here under the crown of Sweden, received from it a grant of liberty to take two or three vessels, with men, &c., to be landed below Fort Christina, on the north side of South river, and there to take, by their agents, as well on this side of the river as on the other, as much land, as was necessary for their project to put the lands under actual cultivation in the space of ten years. To this was added the right of exercising, in their district, high and low justice, of founding there cities, villages and communities, with a police, statutes and ordinances, to appoint magistrates and officers, to take the title and arms of the colony or province, which rights they were to receive as an hereditary fief. Risingh, also, in 1653, obtained from the crown letters patent, in consideration of his faithful and zealous services as commissary of the general college of commerce, to him and his wife, and their lawful heirs male, and their descendants, as much land as twenty or thirty peasants could cultivate, with feudal rights. No authority is known to have been given enabling the Swedish governors here to make grants of land.(1)

(1) MS. Phil. Society.

The Dutch governors or directors at New York, after their conquest, made titles for lands on the Delaware by patent. In 1646 Kieft, director general of New Netherlands, granted to Abraham Plank and others, that they might settle themselves on the South River of the New Netherlands and take possession of lands lying in the said river, almost over against the little island called Vogelsandt, of which was granted one hundred morgen of land; to settle three or four farms or plantations, and to cultivate within one year after the date thereof, or sooner if possible. Stuyvesant, in 1654, made patents of lots in fort Casimir, and plantations in its neighbourhood. Dutch patents make part of the titles of present possessors.(1)

The English authorities under the Duke of York, after their occupancy here, confiscated the estates of some of the Dutch, who had borne arms against them, and granted their lands to other persons, reserving quit-rents in wheat, payable to the appointed authorities. They required, by proclamation, that all patents granted by the Dutch for lands on the Delaware, should be renewed, and that persons holding lands without patents, should take them out under the English authority. They confirmed both Swedish and Dutch titles for lands at various places, from the ocean up to the neighbourhood of Philadelphia.

Under Andros, the last of these English governors,

(1) 4 Hazard's Register.

the system was that afterwards generally adopted by William Penn and his heirs, of granting vacant lands by warrant and survey. In 1676, Andros constituted Edmund Cantwell surveyor for the whole river and bay of Delaware, to give new comers any reasonable quantity of lands, not disposed of or settled—referring him to the custom of the place and neighbourhood, but supposed forty or fifty acres sufficient for a head, if able to improve it, lest they run into former errors of giving greater tracts of land than they improved, to the hindrance of others. In 1677, Andros appointed Walter Wharton to be surveyor on Delaware bay and river, and authorized him to receive for surveys, every fifty acres and under, ten shillings—above fifty and under one hundred, twenty shillings—above one hundred and under one hundred and fifty, thirty shillings—and so proportionably for any greater quantity, and no more; giving to the persons for whom any lands should be surveyed, a survey plat or card of said lands; and to make due returns of the same unto the office of records. Said persons also to find a boat or horse, or allow it, and other travelling and fitting charges of the surveyor. All lands to be carefully laid out from the water side, if it may be, or so as not to hinder any, or be prejudicial to adjacent lands, and to lay out fitting highways or convenient roads. In 1680, the same governor appointed Ephraim Harman to be surveyor for Newcastle and precincts, as also, for St John's and dependencies, to survey and lay out land as a surveyor ought to do, in any place not duly taken up, accord-

ing to such warrants as he should, from time to time, receive from him, or upon extraordinary occasion, for the benefit of the place, to fit persons as should apply for the same; of which he should make due returns to the secretary's office at New York. Accordingly, we have an example in the same year of a warrant to lay out twelve hundred acres for J. R. adjoining his improvement, including the same, on direct lines, according to the regulation—and likewise to J. S. twelve hundred acres adjoining, who hath a patent for that quantity.(1)

The land within the province, which had been purchased from the Indians before William Penn's arrival, was confined to settlements scattered along the borders of the Delaware and Schuylkill. Some were in the neighbourhood of the river opposite Trenton: where, it appears, there was a quaker meeting.

Several instances occur in which lands derived from grants or promises by Governor Andros, were confirmed under the proprietary government.(2)

William Penn, after obtaining his charter, and before his departure from England, sold to certain persons in England, called *first purchasers*, a considerable quantity of land in the province, in large as well as small parcels, and received the consideration money. These grants were by deeds of lease and re-

(1) 4 Hazard's Register.
(2) 2 Smith's Laws 109.

lease for land in the province at large, not specifying metes, or bounds, or situation. To appropriate them it was necessary for the parties to do something more. These deeds sometimes remained in the hands of owners of large tracts, and others were lost or mislaid. To prove their existence, and the names of the parties, a list of names, commonly called the list of first purchasers, and containing a warrant, signed and sealed by William Penn, to his surveyor-general, to survey the several quantities of land there mentioned, has been often received as evidence. These grants or sales have been since denominated *old rights*, and had peculiar privileges attached to them of city and liberty lots. They amounted altogether to more than three hundred thousand acres.(1)

The deeds of lease and release above mentioned, recited the charter bounds of the province, the erecting it into a seignory, and the powers given to William Penn to make grants of lands, to be held of him, notwithstanding the statute of *quia emptores*, and then bargained and sold the just and full proportion of —— acres of land (every acre to be admeasured and computed according to the dimensions of acres mentioned and appointed in and by the stat. 33 Ed. I.), situate within the province, the same to be allotted and set out in such places or parts of the province as, by the concessions or constitutions of the 11th of July 1681, between William Penn and the first purchasers, was

(1) 1 Dall. 21, 64; 2 Sm. Laws 106, 138.

agreed, or should be thereafter agreed—to hold in common socage of William Penn as of the seignory of Windsor—with covenants by William Penn to discharge the Indian title, and for quiet enjoyment and further assurance, and, on the part of the grantees, to record the deed within six months after such time as a public register should be appointed within the province.

Before, and after his arrival, warrants issued to survey the lands, and the city and liberty lots appurtenant.(1)

By the twentieth section of the laws agreed upon in England between William Penn and the first purchasers, before his departure, afterwards re-enacted at Chester in the great law, in case the deeds of purchase in England made of lands in the province should be lost by the way, and so could not be registered, copies of the deeds, attested by a public notary, were declared to be of equal force therein.

The province, by a calculation of the contents of the charter boundaries, contained thirty-five millions three hundred and sixty one thousand six hundred acres. The final adjustment of these boundaries with Maryland, Virginia, and New York, did not take place till later times, and the jurisdiction of the river

(1) 5 Sm. Laws x. xi.

Delaware, with the rights to its islands, was the subject of compromise with the state of New Jersey.(1)

(1) See 2 Sm. Laws 129; Gordon's History of Pennsylvania. The first number of the Proceedings of the Historical Society of Pennsylvania contains a perspicuous and interesting memoir of the long dispute concerning the boundary between Pennsylvania and Maryland, written by James Dunlop, Esq., of Chambersburg, Penn.

CHAPTER II.

INDIAN PURCHASES.

The first Indian purchase after the charter was made in July 1682, a short time previous to William Penn's arrival, by Markham, his provincial secretary. It contained a small territory, beginning opposite the Falls of the Delaware (now Trenton), and up that river, and across from it westward to the river Neshaminy, and down that stream to the Delaware. This included a part of the present county of Bucks. The next deed, of June 1683, after the arrival of the proprietary, conveyed to him a small portion of land below the former, lying between the Neshaminy and Pennypack creek. There is no memorial in writing of the celebrated treaty made under the elm tree at Kensington, in December 1682, though handed down by history and tradition, nor is it believed that any lands were then purchased. It is supposed to have been only a treaty of amity. In July 1683, the right of certain Indians in land west of Schuylkill was obtained; probably lying in the present counties of Philadelphia and Chester.

Soon after appear the first approaches towards the

Susquehanna. In 1683, 1684 and 1685, deeds were executed for lands west of Schuylkill, and on the Susquehanna. In August 1686, the deed for the much disputed walking purchase is said to have been obtained, but the deed does not exist. It was confirmed in 1737. In 1692, there is a deed from the celebrated King Taminent and others, for his tract of land lying between Neshaminy and Poquessing creek. The latter is the boundary between the present counties of Bucks and Philadelphia, and Mr Smith, in his note, states, that near the lower side of the Poquessing, on the Delaware, on an elevated piece of ground, the city of Philadelphia was first intended to be built; but no steps were taken for that purpose. Another deed to the same effect was made in 1697.

In 1696, a deed was executed from Thomas Dungan, late governor of New York, who was Penn's agent, to William Penn, for land lying on both sides of the river Susquehanna, and the lakes adjacent, which Dungan had purchased of the Susquehanna Indians. This deed was afterwards much complained of by the Indians, but it was confirmed by deed of 13th September 1700, from the kings or sachems of the Susquehanna Indians. This conveys the river Susquehanna, and all the islands therein, and lands next adjoining the same.

Thus far the lands freed from the Indian claims were of comparatively small extent, and their boundaries sometimes very imperfectly defined. Afterwards,

from 1718, the year of William Penn's death, they became more important.

In September 1718, all the lands between the Delaware and Susquehanna, from Duck creek to the mountains on this side of the Lehigh, were conveyed; but what extent of land this included was much disputed, and nearly occasioned a war with the Indians. The proprietary's officers said they understood, at the time the deed was drawn, and ever since, that the Lehigh hills stretched away from a little below Lehigh or the forks of the Delaware (now Easton) to those hills on the Susquehanna that lie about ten miles above Pexton (near Harrisburg). The Indians said the hills passed from Lehigh above Oley, and reached no further, and that the Tulpehocken lands lay beyond them. It was agreed the Indians might remain, but they were not to disturb the people on the Tulpehocken lands. The site of these lands seems to be in Lancaster county. In 1723, there were still but three counties in Pennsylvania, viz. Philadelphia, Bucks, and Chester. The latter extended westwardly to the Susquehanna river, or as far as settlements and surveys had been authorized. In 1729, Lancaster county was laid off.(1)

In 1732, Thomas Penn arrived, and was present at a treaty with the Indians, and obtained, in September, a deed for the lands north of the Lehigh hills, and

(1) 3 Haz. Reg. 7. 4 Ib. 254. 2 Sm. Laws 113.

thence to the Blue Mountains, and between the branches of the Delaware on the east and the waters falling into the Susquehannah on the west, which quieted the lands at Tulpehocken. This appears to include parts of the counties of Lehigh and Berks. In 1736, the dispute about Dungan's deed was settled, and the Five Nations ratified it by a new conveyance, transferring, among others, all lands on the west side of the Susquehanna, to the setting of the sun, and to extend up the same hills or mountains northward, &c. By a private deed, some of the Indians conveyed all lands in the government, from the Delaware to the endless mountains. These purchases embraced the present counties of York, Franklin, Adams and part of Cumberland, and also Lebanon and parts of Dauphin, Berks, Lehigh and Northampton. In 1737 the Delawares confirmed the walking-purchase in Bucks county, which extended about thirty miles beyond the Lehigh hills, over the Blue Mountain. It included the best of the lands in the forks of the Delaware and the Minisinks—now Northampton, &c.

In 1749, the lands between Mahonoy, on the east side of the Susquehanna, and the Delaware north of the Blue Mountains, were obtained: apparently, in part or whole, the present counties of Pike, Northampton, Schuylkill and Dauphin.

Northampton and Berks counties were laid out in March 1752.

The treaty at Albany, in 1754, resulted in another conveyance of Indian lands to the proprietaries. The Indians, by deed dated the 6th of July 1754, assigned all the lands in the province beginning at the Blue Mountains on the west branch of the Susquehanna, a mile above the mouth of Penn's creek, thence northwest and by west, as far as the province extended, to its western boundaries: thence along the western to the south line of the province: thence by the south line to the Blue hills. From the wide grasp of this conveyance, which left but comparatively little to the Indians, arose the Indian wars in Pennsylvania, that led to Braddock's defeat the following year. They were the first Indian hostilities in the province. In 1758 it was determined to abridge the bounds of this conveyance, in consequence of the interposition of the English government with the proprietaries, and a deed for this purpose was executed at Easton, in October of that year, which released to the Indians the lands situate northward and westward of the Allegheny hill, retaining the lands lying between the Blue Mountain and the Allegheny hill, south of Penn's and Buffalo creek. This seems to embrace, in whole or in part, the present counties of Union, Centre, Mifflin, Huntingdon, Bedford and part of Cumberland.

The last purchase made by the proprietaries, was at Fort Stanwix, in November 1768, and took in the lands lying east of the north branch of the Susquehanna beginning at Owego, down to Towanda, thence up the same and across to the head waters of Pine

creek, thence down the same to Kittaning, and from Kittaning down the Allegheny and Ohio rivers to the south line of the province, and thence by said line to the Allegheny mountains, and up the same across the Susquehanna to the Delaware, and thence by the Lackawaxen creek, and a line, to the place of beginning. This appears to include, in whole or part, the present counties of Northumberland, Columbia, Luzerne, Wayne, Susquehanna, Bradford, Lycoming, Clearfield, Indiana, Armstrong, Cambria, Somerset, Fayette, Westmoreland, Allegheny, Washington and Greene.

All the residue of the Indian lands within the charter bounds, were purchased by the commonwealth, in October 1784, at the treaty at ~~Fort M'Intosh,~~ embracing, in whole or part, the present counties of Tioga, Potter, M'Kean, Jefferson, Warren, Venango, Armstrong, Allegheny, Butler, Crawford, Mercer and Beaver.

Erie county was ceded to the United States by other states, and purchased by Pennsylvania in 1789.(1)

(1) See 2 Sm. Laws 109, for a full detail of the contents of these Indian deeds, the originals of many of which remain in the office of the secretary of the commonwealth at Harrisburg.

x Fort Stanwix

CHAPTER III.

TITLES UNDER WILLIAM PENN.

William Penn, by his charter, became owner (subject to the Indian titles) of the territory comprised within the boundary lines of Pennsylvania, excepting that portion previously possessed by the Swedes, Dutch and English, which lay along the Delaware and Schuylkill. This portion was freed from the Indian title; the rest was occupied by various tribes. His policy towards the natives, like that of his predecessors, was pacific. He began by conciliating them, and making purchases from time to time, and by every means in his power prevented others from buying or settling beyond the limits of his purchases. In 1683, he had acquired sufficient territory, in addition to the prior settlements, to enable him to lay out the counties of Philadelphia, Bucks and Chester.

Looking, as he no doubt did, to a series of relinquishments by the natives, which would place at his disposal large bodies of land, it was for him to adopt such a system for disposing of them as he thought proper. He might choose to survey his lands as soon as they were purchased, and separate them into tracts

or lots, as was done in later times in the depreciation and donation districts by the state, and in their territories by the United States. Or he might have them surveyed to purchasers from time to time, as they were disposed of. He adopted the latter course, and it has been generally pursued since. A regret has been expressed that he did not adopt the former plan, as it might have saved much uncertainty of title and dispute, and have advanced the improvement of the state. But there was not then experience to guide him, nor were his means very competent to the expense. The plan he did pursue was the one previously existing in his province and in the neighbouring colonies.

It would seem to have been originally his design to lay out the lands in townships of five or ten thousand acres, as was stipulated in the concessions to the first purchasers, and that the surveys should be made within their boundaries. This is inferred from the form of the warrants, which authorized surveys, "according to the methods of townships appointed by me." This method, if ever carried into effect, was not long persevered in, though the clause in the warrants continued, by the force of official habit, till 1809.(1)

For the purpose of conducting the sale of lands, a secretary of the land office, surveyor-general, auditor-

(1) 2 Sm. Laws 140.

general and receiver-general were appointed, who held their offices at the seat of government. Deputy surveyors were appointed by the proprietary, or commissioners of property, or afterwards by the surveyor-general, and gave security.(1) William Penn arrived here in 1683, and staid but one year and eight months. He came back in 1699, remained about two years, and returned to England. To superintend his landed concerns while absent, he appointed commissioners of property from amongst his intimate friends here, who had authority from him to purchase lands and grant them for such sums and quit-rents as to them, or any three of them, should seem just and reasonable,(2) or as should be respectively agreed for.(3)

Whatever usages grew up in later times, in respect to acquiring lands by settlement, it would seem that no title was then permitted without an office right. In 1687, one Allen settled on land contrary to order, and without being surveyed. He was required to appear before the commissioners of property, and give his reasons therefor, or process to issue against him in the proprietary's name. He appeared accordingly, and was ordered to leave the land in a reasonable time, or be prosecuted.(4) In 1712 an act of assembly was passed, but repealed in council in 1713, which seems to speak the same language. It confirmed patents and grants from the proprietary and former authori-

(1) 5 Sm. Laws 10, 11, 12.
(2) 2 Sm. Laws 142.
(3) 5 Sm. Laws 12.
(4) 2 Sm. Laws 150.

ties, but, among other things, provided that it should not create a right to the possessor or claimer of lands that were not taken up by virtue of a warrant or order from persons empowered to grant the same, and by a surveyor appointed for that purpose.(1)

The warrant here spoken of was a formal authority from the proprietary, or his commissioners of property or the governor, in his absence, issued from the office of the secretary of the land office, under seal, directing the surveyor-general to make a survey for the warrantee, on certain terms expressed therein. This warrant was taken to the surveyor-general, who filed it in his office, and made out a copy, not under seal, with an order annexed from him to the deputy surveyor of the proper county, to make the survey.(2) After the deputy received it, and executed the survey, it was the duty of the deputy (on payment of his fees) to return the survey to the office of the surveyor-general, with a draught of the boundary lines and contents of the tract, and certifying the date of survey, under what authority, and for whom made, where they remained of record for the inspection of all concerned. When a patent was to issue, the surveyor-general transmitted a copy of this return to the secretary of the land office, and the patent conformed to it. It will, however, hereafter be seen that this formal method was not always pursued in originating titles to land. Various informal orders, agreements, and other modes of con-

(1) 2 Sm. Laws 142. (2) 6 Serg. & Rawle 210.

senting to this appropriation by individuals, were obtained from the proprietary officers from time to time, which were recognised as sufficient to transfer the right, and became the foundation of valid titles. For as the soil of the province, after its purchase from the Indians, belonged exclusively to the proprietaries, to sell, grant, or dispose of as they saw fit, their consent, in whatever way shown, was sufficient to vest an equitable title, which a court would protect. It was not till 1765 that these modes of originating titles were entirely put an end to.

Regularly on taking out the warrant, the purchase-money was paid. But there were frequent instances in which this was omitted: sometimes by direction of the proprietary or his officers, in which case the warrant contained an entry on the margin, "by special order," but in numerous cases without such special direction.(1) And sometimes quit-rents, though usually made a part of the consideration, were substituted for purchase-money.(2)

For the guidance of the deputy surveyors, instructions were prepared in the fall of 1701, and accompanied their commissions, containing substantially the same regulations for the execution of warrants which have since remained in force, though at later periods they were rendered more extensive in their provisions.(3)

(1) 2 Sm. Laws 154. (2) 2 Sm. Laws 138, 142. *See post.*
(3) 5 Sm. Laws 11. *See Appendix.*

CHAPTER IV.

FROM THE DEATH OF WILLIAM PENN IN 1718, TO THE ARRIVAL OF THOMAS PENN IN 1732.

William Penn died in 1718. By his will he devised *the government* of Pennsylvania, and territories (now state of Delaware), to his friends, the Earls of Mortimer, Oxford and Powlett, in trust to dispose thereof to the queen, or any other person. His lands, rents, &c. in America, he devised to his wife Hannah, in trust to dispose of so much as was sufficient to pay his debts, and then to convey forty thousand acres to his issue by a former wife, and the rest of his landed estate there to his children by the second wife. All his personal estate in Pennsylvania, and elsewhere, he bequeathed to her.

Several transactions had occurred in the latter period of his life, which produced disputes as to the rights of his devisees, and led to a suit in chancery. His will was dated in 1712, and after the making of it, he had agreed to sell the province of Pennsylvania to the Crown, for the sum of £12,000, and had received a small part of the money. A question arose whether his interest in the province was to be

considered real or personal estate: if personal, it went, under his will, to the widow: if real, to her children. The suit lasted eight or nine years, when a compromise took place amongst the family, and the government and province became vested in John, Thomas and Richard, his surviving sons by the second wife.

William Penn had, moreover, in 1708, mortgaged the province to Gouldney and others, to secure £6,600 borrowed money, with power to sell. In 1711, having appointed Messrs Logan, Shippen and others, his commissioners of property here, the mortgagees authorized the same persons to grant lands and receive moneys. This mortgage remained unsatisfied at the death of William Penn; four of these commissioners survived, and were also trustees under Penn's will, as to the management of his lands here. They had, therefore, in this way, power to dispose of lands, by granting warrants and issuing patents, though not strictly proprietary officers. Hence, in 1719, and afterwards, warrants were issued under the less seal, the warrantees paying "to the use of the trustees of the province," instead of "to our use," as formerly. Patents were in the names of the commissioners of property, and recited the commission of William Penn, and of the mortgagees of 1711.(1)

Although it has been frequently mentioned in the

(1) 2 Sm. Laws 149.

opinions of judges, and the arguments of counsel, that the land office was shut from the death of William Penn in 1718, to the arrival of Thomas Penn in 1732, during the minority of Thomas Penn and his brothers;(1) yet it would seem, from a more exact examination, that, for all substantial purposes, the office was open. *Mr Smith* states, that warrants were issued for lands on the east side of the Susquehanna during the whole time, almost without interruption, and in great numbers. From 1720 to 1730, the warrants were generally to survey old rights and city lots; but there were some new warrants. In 1720, a warrant issued to survey land at Oley (now Berks county), and was patented in 1736. Moneys were paid for lands, and accounts settled by the receiver-general; and the surveyor-general made his return in the usual manner, for all such as were for old rights or city lots, or surveys before 1718, and on warrants of re-survey. The only difference was, that when new rights were acquired, if a patent were desired, the first return of survey by the deputy was taken without being previously entered in the surveyor-general's office, and a formal return transmitted from thence.(2)

It was during this period, that some of those irregular modes of originating titles, before mentioned, began. In 1719, James Logan, one of the commissioners of property, agreed that a person should have five

(1) 4 Dall. 102. 1 Binn. 187.
(2) 2 Sm. Laws 148.

hundred acres of land at Conestogo; and J. Steel, receiver-general and secretary of the land office, wrote a letter to the deputy surveyor of Chester county, stating this agreement, and requesting him to survey it to him, and the warrant should be ready. The title came in question in 1763; and the evidence of this agreement and letter being objected to, on the ground that Steel, by his order only, without a warrant from the proprietors or commissioners of property, could not authorize the location of lands; and even supposing it to amount to an order from Logan himself, he was only one of the commissioners: the court said, that under this sort of orders, great part of the province had been settled, and for conveniency they had been received. They cited a case where a letter from Richard Peters, secretary of the land office, to the same effect had been allowed.(1) And about that time, numerous warrants were issued on settlements said to have been made under previous agreements, which ran thus: "Whereas, in pursuance of an agreement made by us, about five years ago, to settle and improve, you are required to survey, &c." No evidence exists of such original agreement, nor whether it was verbal or written. It presents a trace of a right partly acquired by settlement.

Prior to the revolution, there were few acts of assembly concerning vacant lands, and none that related to the modes or terms of sale by the proprietaries.

(1) 1 Dall. Rep. 6.

Purchases from the natives, grants and reservations, were conducted at their will and pleasure. The legal construction of their grants was to be made, like those of other individuals, according to the express or implied understanding of the parties, the known usages of the land office, and the maxims of common law and equity applied by the courts. The proprietaries, says Judge YEATES, kept the land office in their own way, and transacted their business as they thought proper. They were jealous of any interference with their land office, and considered it subject to their own sole control. Matters of consequence were frequently transacted by loose notes between the secretary and surveyor-general, of which scarce any traces are to be found. When the assembly wished to make it an office of record during Denny's administration, and the governor passed the law, interest was found in England to procure the royal dissent.(1)

The aid of the legislature was obtained to protect their interests in some instances. One was, to prevent the purchasing of land from the Indians without their leave: for which purpose, in 1700, a law was passed declaring that such purchases made within the limits of the province and territories, should be void and of none effect. And by the act of 18th February 1769, persons settling on lands not purchased of the Indians, were subjected to fine and imprisonment, and security

(1) 1 Yeates 297. Two repealed acts, passed in 1700 and 1711, are given in the Appendix to Miller's edition of the Laws.

for good behaviour. Another object of legislative protection was against persons entering on their vacant lands without office right, for which purpose an act in 1729—1730, besides extending the provisions above mentioned of the act of 1700, enacted, that persons taking possession of lands not located or surveyed by some warrant or order from the proprietary or his agents to them or those under whom they claimed, and refusing, on notice, to deliver up, or make satisfaction therefor, might be proceeded against on the statutes of forcible entry and detainer, and no length of possession should be a plea on such prosecution.

This act, if strictly enforced as to settlers, would have enabled the proprietary officers to compel persons to remove, who had entered on vacant lands without official authority, or to pay the purchase-money, and thereby, in a great measure, put an end to the practice already commenced of acquiring title by improvement or settlement—for the persons who resorted to this mode were mostly of the poorer classes that emigrated from Europe into this province, without the means of immediate payment. But had the alternative of expulsion been adopted, it would have deprived the province of the benefit of their industry, and have deterred others from coming into it. It would seem that it was not thought good policy to do so, for this act, like other public acts and proclamations on the subject, was never enforced; and the practice of taking possession of vacant lands without visiting the seat of government or proprietary officers, continued and increased.

In 1705 a limitation law was passed which would seem designed to protect imperfect titles which had been obtained prior to the charter to Penn, or perhaps afterwards. It enacts that seven years quiet possession of lands within the province which were first entered on upon an equitable right, should forever give an unquestionable title to the same against all, during the estate whereof they are or shall be possessed, except in cases of infants, married women, lunatics and persons not residing within the province or territory.

CHAPTER V.

TITLES UNDER JOHN, THOMAS AND RICHARD PENN, SONS OF WILLIAM PENN.

As the province had so long been destitute of an acknowledged proprietor, and affairs were conducted by commissioners acting under the authorities before mentioned, they were, no doubt, deficient in the full vigour and influence which the presence of a proprietary on the spot would have conferred. In 1732, after the termination of the long protracted dispute concerning William Penn's will, and the settlement of the mortgage debt, Thomas Penn (acting for John Penn, himself and Richard Penn) arrived and took possession of their government and property here.

In 1734, a title originated under "Blunston's Licenses," which, in recent controversies concerning the manor of Springetsbury, in York county, became the subject of judicial investigation. The land lay on the west side of the Susquehanna, and had not been purchased of the Indians, so that no absolute title, irregular or otherwise, could be given, according to established usage and law. But a dispute was existing with Lord Baltimore concerning the boundary of

William Penn's charter, and the Marylanders were extending their settlements up the Susquehanna. The Indians were apprehensive of disturbance from these causes, and at the treaty in 1722, Governor Keith suggested to them, as the best plan to preserve themselves from the encroachments of the Marylanders and others, to allow a survey of the manor of twelve thousand acres, stating, that when the land should be marked with the proprietary name (or in other words, appropriated to him), it would keep the Marylanders and others from coming to settle there. To this the Indians agreed, desiring it to be surveyed for William Penn's grandson. A warrant was issued, and the survey made, and information sent to the governor of Maryland. And in January 1734, a special commission issued to Samuel Blunston, a gentleman resident on the banks of the Susquehanna, authorizing him to grant licenses to settle and take up lands on the west side of the Susquehanna. He issued many licenses from January 1734 to October 1737, by which he promised patents on the usual terms, when the purchase should be made from the Indians. This title was always recognised, and after the purchase made in 1736, the proprietary confirmed the licences by regular warrants. They were peculiar in two respects. 1. They were issued for lands not purchased from the Indians. 2. They formed a distinct species of land title, containing all the essential parts of a warrant, except that in no instance was the purchase-money paid when they were issued. They directed a survey, and it was the usage for deputy surveyors to make

surveys under them, in the same manner as under warrants, which were accepted and formed the basis of many titles.(1)

It has already appeared, that during the interval from 1718 to 1732, the sales of lands, at the land office, must have been rather limited—that the practice had become prevalent for persons to settle without office right—and that in 1732, additional lands were purchased from the Indians. This situation of affairs rendered it exceedingly desirable for the new proprietaries to adopt measures which would increase their sales, and induce settlers to come forward and take up regularly the lands they occupied. With this view, they devised the scheme of a lottery, which should be calculated to enlist purchasers by the chance of gaining large bodies of land at a small price, and at the same time gave a preference to settlers for the tracts they possessed: and it is in this measure that the title by settlement is first connived at.

The lottery scheme was projected and published for the sale of one hundred thousand acres of land in the province. The proprietaries stated as their reasons for it, in the advertisement, that having considered a proposal made to them for the sale of one hundred thousand acres of land by way of lottery, and finding that the same tended to cultivate and improve the lands, and consequently increase the trade and riches of the

(1) 4 Yeates 17. 4 Dall. 120. 2 Sm. Laws 145.

province,—and also considering that many families, through inadvertency, had settled on lands to which they had no right; but by becoming adventurers in such a lottery might have an opportunity of securing those lands and settlements at an easy rate, to themselves and their posterity: they, therefore had agreed to sell by way of lottery one hundred thousand acres of land, estimated at the settled price of £15. 10*s*. current money per hundred acres (amounting to £15,500), the tickets at forty shillings each producing that sum if they were all sold. The quit-rent to be one shilling sterling per one hundred acres: reservations as to mines as usual.(1) The form of the ticket was prescribed, and the number of blanks and prizes: the latter varying in quantity from three thousand acres, the highest prize, to twenty-five acres the lowest: to be laid out any where in the province, except on manors, lands already surveyed or agreed for, or actually settled or improved, with a proviso that persons seated without warrants, and drawing or purchasing prizes, might lay their rights where they were seated.

After the lottery should be drawn, the tickets which drew prizes were to be indorsed with a certificate thereof, and on production at the secretary's office warrants were immediately to issue, surveys to be made, and patents granted. Persons owning sundry

(1) One fifth of all gold and silver mines, deliverable at the pit's mouth.

small prizes might have them included in one warrant, or a large prize divided into smaller warrants. No warrants were to issue for twelve months from the date, or surveys to be made, except on former rights. A time was fixed for the drawing: and further regulations were to be adopted to survey and distribute the lands to prize-holders.(1)

It appears that this lottery was never filled. But many tickets were sold, and became the primary titles to land. The surveys were made, and the lands thus surveyed were, for a long time, kept apart from the common mass. So late as the years 1769 and 1770, warrants of acceptance were issued, on special terms, for part of the lottery lands. The engagement respecting not issuing warrants or allowing surveys for twelve months, was fulfilled.(2)

The proprietaries began at length sensibly to feel, in the neglect of payment for lands, the effects of the loose modes of proceeding tolerated by their officers, as well in respect to those who took out warrants, as to settlers. In 1738 they issued a proclamation calling on these persons to pay, and threatening legal proceedings. They state in the preamble, *that great numbers of people* had obtained warrants for lands, for which they had agreed to pay the consideration-money and quit-rents therein specified, and that they contained express conditions to be void if these agree-

(1) 2 Sm. Laws 149. (2) Ibid.

ments were not fulfilled in six months: that under colour of these warrants, and surveys thereon, *many persons* took possession, but failed altogether to comply with the conditions, whereby they had become void. That *others*, under pretence of leave, and some without any authority, entered and transferred their claims, *under the name of improvements*, cleared land, cut down timber, &c., so that they might be lawfully removed,(1) but in consideration of the hardships they might thereby suffer in the winter season, they gave notice, that unless they paid the consideration-money by the 1st March next, they would be proceeded against according to law, and be removed, and the lands granted to such as would pay for and improve the same.(2)

Not only had the system of improvement become thus extensively established, but we here discover that these titles had become articles of transfer in the hands of numbers of persons who claimed by virtue of them. The threats of legal proceedings were, however, but a name: no measures were taken, after this proclamation, for the forcible removal of either warrantees or settlers.

But whilst the proprietaries, by their official acts, reprobated and threatened these imperfect rights by warrant and survey without patent, and by settlement, they held but a precarious character in legal

(1) See the act of 1729—1730, above.

(2) 2 Sm. Laws 151.

contemplation. They were not clothed with the qualities of real estates, but were treated as personal property. As such they were transferred without deed: they were disposed of by executors and administrators: and subjected to other rules that govern personal estate. In process of time, a gradual change took place: they came to be considered as real estate, and the title equitable as against the proprietary, and legal as against all other persons. Their modes of enjoyment and transmission were subjected to established rules, and absorbed into the common system which governs real estate. This change occurred about the year 1758.(1)

It would seem, from one case much disputed, that about the year 1745, deputy surveyors, in one district, undertook to make surveys without any sort of warrant or direction, under some general directions from the land office, or usage, and that they were afterwards uniformly sanctioned by the land office. A title of this kind came in question before M'Kean, C. J., who held it bad: but on another case the question was revived, and in a more full consideration, the practice of originating titles in this way was found to have been too firmly established to be overthrown, and they were held valid.(2)

A promise in 1749, by Richard Peters, secretary

(1) 1 Yeates 213.
(2) 2 Sm. Laws 157. 2 Yeates 306, 356.

of the land office, to a trespasser, to induce him to move off the unpurchased Indian lands, that when the land should be purchased, the place should be secured to him, has been considered as entitling such person to a preference after the purchase. It appeared the proprietary officers had always recognised it. Such settlement was, indeed, an intrusion, not only not allowed, but forbidden by proclamation and acts of assembly. But if the proprietary, through his officers, adopted the milder system of promise, instead of force or punishment, the court could do no less than enforce his own rules for regulating his property.(1)

In 1760 or 1761, by connivance of the officers, or consent of the proprietary, a practice existed of permitting surveys without any warrant or order, on which the kind of warrant was subsequently issued, called a warrant of acceptance. It recited that, "Whereas, by our consent and direction, a survey was made," &c., and then required the survey to be accepted. No entries show this consent. The recital would be binding on the proprietary, but would not affect third persons.(2)

About 1762, when William Peters was secretary, another practice obtained to some extent, of issuing certificates, signed by him, that warrants had issued for certain land, when in fact no warrant had issued,

(1) 2 Sm. Laws 137, 162. 1 Binn. 247. 6 Binn. 62.
(2) 2 Sm. Laws 147.

nor had any purchase-money been paid. On these certificates surveys were made without any direction from the surveyor-general, and subsequently warrants of acceptance were delivered, stating, that whereas it appeared by the book of entries of warrants, that a warrant issued to A, B, &c., and whereas he had represented he had procured a survey, but the said warrant not being now to be found, &c.(1)

These practices, with the similar irregular ones before mentioned, were all terminated in the year 1765, by the proprietary's instructions of that year to the deputy surveyors, not to survey on any ticket or order from any person but the surveyor-general. Thus restoring the system to its regular operation.

During the long interval between the lottery of 1735 and the year 1765, we find no new plan adopted by the proprietaries for the disposition of their lands. The purchase made from the Indians in 1736, carried their full ownership on the west side of the Susquehanna to the Blue Mountain: and by the purchase of 1754, as afterwards explained, their limits were extended to the western line, from Buffalo creek, and included a great part of the Juniata lands, and intersected the Alleghany mountain at its extreme boundary.(2) These, and other purchases became the subject of complaint by the Indians; the pretensions of France, on the western frontier, began to excite, in

(1) 2 Sm. Laws 163. (2) 2 Sm. Laws 160.

1749, apprehensions of hostility: till in 1755 the campaign of Braddock and others which followed, involved the province, for the first time, in warfare with the savages, and produced unexampled confusion and distress. These events tended to divert the minds of the government and people from any particular attention to land affairs, and things went on (excepting the partial deviations above mentioned) in their old and accustomed channels. In 1763 peace took place between England and France, and tranquillity was restored to the province.

CHAPTER VI.

TITLES IN 1765.

A DELIBERATE change in the ancient mode of proceeding in the granting of lands took place in the year 1765, when a new system was introduced, called the *Application System*, together with a more perfect regulation of the former modes of surveying lands. The measures then adopted render that year an important epoch in the history of our land titles, the influence of which has been felt in succeeding periods.

The proprietaries having again begun to feel the burthen of their extended domains of vacant land, seem to have been willing to procure purchasers and settlers without asking payment in the first instance: on the contrary, they evince a jealousy of the power thrown by the former money system into the hands of speculators, who purchased up large bodies of lands, with the design of retailing them at advanced prices. This is one of the reasons assigned by them for the new policy pursued. Another is, that the old system (either being imperfect in itself, or not duly observed) occasioned much uncertainty of title, litigation and imposition. It is also probable that the

events of the late war had convinced them of the expediency of having the frontier settled as speedily as possible.

They therefore issued an advertisement, dated 15th June 1765, which prescribed that, for the future, the following method should be observed for granting lands within the province:

1. Every person desirous to settle vacant land should *apply* to the secretary of the land office, who, *instead of granting a warrant*, should enter in a book the name of such person, the date of his application, and the description or *location* of his land. 2. No application to be for more than *three hundred acres to any one person*, without special order: and, every evening, the secretary to send to the surveyor-general a true copy of all applications of that day, regularly numbered in the order applied for. 3. The surveyor-general then to send transcripts to his deputy, according to the district they fell in, with their dates of entry, *and order to survey*. 4. The deputy, within six months, to survey, and return into the surveyor-general's office—provided copies were delivered in a reasonable time, and the applicant, or some one for him, attended the deputy to show the land, at the time appointed. The surveyor-general was to frame and send instructions, with penalty of removal in case of the deputy's neglect. If no survey, by neglect of the party, or other good cause, the deputy to certify the cause within the time limited. 5. The applicant,

within six months after the date of return of survey, to pay the receiver-general in full for the lands on the new terms, £5 sterling for one hundred acres, with interest, from the application, and one penny sterling per acre quit-rent. Thereupon *a warrant of acceptance to issue*, directing the surveyor-general to accept, and make return of survey into the secretary's office, and patent to issue, unless cause shown. In case of neglect to show land, or pay as directed, the proprietaries declare themselves at liberty to grant the land to others. 6. Persons claiming by settlement or improvement, were required to enter their applications, and bring certificates from neighbouring magistrates (which, by subsequent advertisement, was extended to other satisfactory proof) of the nature of the improvements, and the time they began (in order to compute interest and quit-rents), under pain, if not done in six months, of being granted to others. 7. The office to open on the 5th August for lands on the east side of the Susquehanna, and on the west, when the office was ready. 8. Former purchasers were called on to pay, and take out patents.

This system was simple and perspicuous. It breathed a mild and lenient spirit towards the body of the people. It vested the lands in them, when ascertained by survey, before requiring any part of the purchase-money, and without the usual forms and expenses of office. It required no other conditions than to call on the deputies, show the lands desired, and on their return pay, and take out a patent, giving

twelve months credit from the date of the application. No conditions of settlement were imposed. The government officers furnished to the deputies the descriptions and orders of survey. Care was to be taken by the surveyor-general that they should perform their duties with promptitude and intelligence. For this purpose, precise instructions for their guidance were shortly afterwards forwarded to them.

By a regulation of the 1st August 1765, improvements, before the late purchase from the Indians, were excluded, unless the applicant had secretary Peters's promise of a warrant. And in this regulation, the language employed in reference to improvements is more strongly marked than any preceding it. The secretary is directed to give warrants to such persons as had built and resided on the land they applied for, and *had a just claim to, as an improvement*, bringing a certificate.

It was further ordered, by another regulation, of the 10th August 1765, that, when a piece of land applied for joined a settled plantation, the secretary should grant a warrant, with interest and quit-rent, from the time of the settlement of the old plantation. And by instructions to the deputies, in October 1765, they were particularly directed, where the land applied for joined some other land of the applier's, which had been settled or improved, to mention this in their draught or return of survey.

These measures were adopted for the purpose of

preventing settlers from obtaining separate rights for separate portions of their lands, in order to evade the payment of interest on that part which they had not actually cultivated or inclosed. As where a person had entered on vacant land, claiming three hundred acres, and gone on to build and improve, but his buildings and improvements were made only on one hundred acres, the residue being left woodland. He might (but for this prohibition) first obtain a warrant for the one hundred acres, stating the commencement of his improvement, and paying interest, and afterwards apply for the two hundred acres, as vacant land, paying no interest: whereas the whole forming a farm, which he claimed from the commencement, by improvement, interest should be paid for all.

The restriction to three hundred acres did not, however, effect the object intended, of preventing one person from taking up more than that quantity of land: for when one individual wished for several tracts of three hundred acres, the practice was to use the names of others as applicants. This was often done: the real party indorsing the list with his own name. This indorsement, the handwriting of the list of tracts applied for, the payment of office-fees, or procuring surveys to be made, have been held sufficient evidence that such party was the real owner, to establish titles derived under his conveyance. So a father's using his son's name in his application, has been deemed a presumption that it was for the use of the father.(1)

(1) 2 Sm. Laws 171. 1 Yeates 164.

On this, as on previous occasions, the periods limited for surveys and patents were not generally regarded. The proprietaries overlooked the departure from them, and did not exact the forfeiture; and by various proclamations and advertisements, after the expiration of the times stipulated, called for the performance of the conditions. In many instances the incipient rights acquired by applications were lost, by the neglect of the parties interested to pursue them with vigilance, and by the intervention of subsequent claimants. Cases arising from controversies of this kind, abound in our books of reports.

The instructions to the deputy-surveyors, before mentioned, were drawn up in the same year. They are full and precise, and have since that time been constantly referred to in land causes, by courts and counsel, as evidence of the usages of the office and its agents under the proprietaries. The legislature, by the act of 1st April 1784, adopted them, and they are accordingly considered in force, so far as they are not changed or supplied by subsequent laws or regulations.(1)

(1) See them in the Appendix, and 2 Sm. Laws 162.

CHAPTER VII.

TITLES IN 1768.

In 1768, a new purchase, and the last by the proprietaries, was made from the Indians, at Fort Stanwix, comprehending a large extent of country in the northern and middle parts of the state, and beyond the Alleghany mountain to the western boundary, which was opened to purchasers in 1769, preserving the application system.

In February 1769, notice was given, by an advertisement signed by the secretary of the land office, that on the 3d April ensuing, the land office would be opened to receive applications. The terms were, £5 sterling per one hundred acres, and one penny per acre quit-rent. No person to be allowed more than three hundred acres, without special leave of the governor. Surveys to be made and returned within six months, and the whole purchase-money paid at one payment, and patent taken out within twelve months from the date of the application, with interest and quit-rent from six months after the application. If the party applying failed, either in procuring survey and return, or paying the purchase-money and

obtaining a patent, the application and survey to be void, and the proprietaries at liberty to dispose of the land to another. A caution is subjoined, not to apply for more land than they could pay for in the time allowed.

Before the 3d April arrived, it was perceived that great numbers of persons were about to apply, and that if the plan of 1765 remained unchanged, by which priority of application gave priority to the land, much contention would take place amongst the applicants. To avoid this, it was determined to adjust, by lot, the rights of priority. The applications (or locations as they were sometime termed) were put together in a trunk, and then drawn out, and numbered in the order they were drawn. This plan formed the heading of the book of locations, and they follow in the order in which they were drawn and numbered, each number containing the precise description. In the Reports we frequently see instances of such a title, called "Lottery application or location of the year 1769," with its number.

There were upon the land purchased in 1768 certain settlers, to whom a preference was given, and others that were excluded. The heading of the book of locations described them as follows: "Those who have settled plantations, especially those who settled by permission of the commanding officers to the westward, are to have a preference. But those persons who had settled or made what they called improve-

ments since the purchase, should not thereby acquire any advantage."

During the recent war with the French and Indians, the western part of the province became the seat of hostilities, and in order to preserve a communication with the western posts and facilitate supplies to the army, it became expedient for the commanding officers to form a chain of inhabitants from the settled country to the western waters. The persons thus situated were exposed to great danger, and many of them were cut off by the savages. On this account they were thought to be entitled to favour. Another class was considered in the same light, because they had relinquished their settlements in consequence of an act of assembly passed in the spring of 1768, and the governor's proclamation in pursuance thereof.(1)

But the ordinary title by improvement on this land during the short interval from the purchase on the 4th November 1768, to the opening of the land office on the 3d April 1769, was not allowed to be valid.(2)

Previous, also, to the opening of the office, there were certain *reservations* surveyed and excepted out of the lottery. One hundred and four thousand acres were appropriated to the officers of the provincial regiments who had served during the Indian campaigns, and were desirous, as they represented,

(1) 1 Binn. 389. (2) Ibid.

to settle together. Twenty-four thousand of these were for the officers of the first and second battalions. They were also large special grants in favour of individuals. These, with the proprietary reservations, were surveyed before the office was open, and being known to the people, were avoided in the descriptions of their locations.(1)

In other respects the titles were similar to those under the applications of 1765, the same rules and regulations prevailing in both. The same practice ensued of using the names of others, where a person wished tracts beyond the amount limited to one person.(2)

Applications ceased in September 1769, and *warrants* afterwards issued for lands included within the purchase of 1768 as for others. When they were then used, it became the practice, both on these lands and others, to pay the whole purchase-money on issuing the warrant.(3)

The purchase of 1768 was the last made by the Penn family from the natives: and no further acts of the proprietaries occurred deserving notice. Shortly after the opening of the land office in 1769, the great political struggle between the then colonies and the

(1) 2 Sm. Laws 169.
(2) 2 Sm. Laws 171. 1 Yeates 164. 2 Yeates 119.
(3) 2 Sm. Laws 170, and records of land office.

mother country commenced, and overcame by its pre-eminent magnitude all attention to minor concerns. The natives embarked in the conflict: Pennsylvania became the theatre of war, and her western and northern frontiers were the fields of battle, instead of negotiation and treaty. No room was left to think of purchases of lands, when it was uncertain on whom the results of the struggle would throw the dominion of the soil.

CHAPTER VIII.

DIVESTING ACT OF 1779.

After four years of contest with Great Britain, it became evident that the war would terminate in the independence of the United States. It became, also, manifest, that the individual ownership of so vast a domain, and the position held by the Penn family, were inconsistent with the principles of the declaration of independence, the security of republican institutions, the prosperity of the state, and the fair and equal distribution of the duties and rights of her citizens, and that policy and justice required that this domain should be vested in the commonwealth, paying to the proprietary family a compensation, in money, as an equivalent, and preserving to them their private estates to an extent not inconsistent with the public welfare. Accordingly on the 28th June 1779, the act for this purpose was passed by the legislature, by which all their private estates, manors and quit-rents thereout, were reserved to the proprietaries; their other landed estates were vested in the commonwealth, and the state bound itself to pay them the sum of £130,000 sterling, after the termination of the war.

This act recited that the charter to William Penn

was granted and held for the great ends of enlarging the bounds of human society, and promotion of religion and learning and the rights of property; and the powers of government, vested in him and his heirs, were stipulated to be used and enjoyed as well for the benefit of the settlers as for his own particular emolument; that the claims of the proprietaries to the whole of the soil contained within the bounds of the charter, and in consequence thereof to the reservation of quit-rents and purchase-money upon all the grants of land therein, cannot longer consist with the safety, liberty and happiness of the good people of this commonwealth, who at the expense of much blood and treasure have bravely rescued themselves and their possessions from the tyranny of Great Britain, and are now defending themselves from the inroads of the savages: that the safety and happiness of the people is the fundamental law of society, and it has been the practice and usage of states most celebrated for freedom and wisdom to control and abolish all claims of power and interest inconsistent with their safety and welfare; it being the right and duty of the representatives of the people to assume the direction and management of such interest and property as belong to the community or was designed for their advantage: that it had become necessary that speedy and effectual measures should be taken in the premises, on account of the great expense of the war and the rapid progress of the neighbouring states in locating and settling the lands heretofore uncultivated, by which multitudes of inhabitants were daily emigrating from

this state; and it enacted, that the estates of the late proprietaries should be vested in the commonwealth for the use and benefit of all its citizens. The soil and lands, excepting the parts reserved to the proprietaries, were made subject to the disposition of the legislature by law. Existing rights in third persons were protected by the 7th section, which declared that all rights, &c. granted by, or derived from, the proprietaries before the 4th July 1776 were confirmed. To the proprietaries were reserved, by the 8th section, their private estates, proprietary tenths or manors duly surveyed and returned on or before the 4th July 1776, with the quit-rents and other rents reserved out of them, or any part which had been sold. All other quit-rents were abolished. Arrears of purchase-money, except the parts of manors, were made payable to the commonwealth.

But at the same time reciting that the freemen of this commonwealth, being desirous to manifest not only a regard to their own safety and happiness, but their liberality also, and remembrance of the enterprising spirit which distinguished the founder of Pennsylvania, and mindful of the expectations and dependance of his descendants on the propriety thereof, and also that sundry marriage settlements and testamentary dispositions had been made thereupon, which would be wholly defeated, and the parties exposed to great disappointment and loss, it provided for paying them £130,000 sterling after the termination of the war. In conclusion, it provided for delivering up to the state the books and papers of the land office.

After the war, this money was paid to the Penn family, and thus terminated their proprietaryship of the soil of the state with the province and seignory into which the charter of Charles II. erected Pennsylvania, to be held of the crown of England by fealty in lieu of all other services. The lands remaining vacant, with the purchase-money on those which had vested in individuals, became a fund for defraying the expenses of the war, rewarding the officers and soldiers of the state, paying the compensation granted to the late proprietaries, and providing for the public expenses. And as the whole control of the subject devolved on the legislature, much of their attention has been occupied by its organization and details. Scarce a session has passed without the enactment of one or more laws in relation to it, and the land laws now form a large and important branch of the legislative code of Pennsylvania.

CHAPTER IX.

TITLES UNDER THE COMMONWEALTH FROM 1779 TO 1784.

From the passage of the act of 1779 until the year 1781, the land office was closed, and no steps were taken by the legislature on the subject. On the 9th April 1781, the first act was passed by which a land office was erected, and holders of existing rights were enabled to pay the purchase-money to the state, and obtain patents; but the selling of any vacant land was deferred.

The office instituted by this act was erected on the proprietary model, consisting of the secretary of the land office, receiver-general (an officer since abolished, his duties being transferred to the state treasurer), and surveyor-general, to which all the records of the old land office and board of property were removed, and they were to issue all future grants and confirmations of land. The legislature thus cautiously preserved, as far as possible, the ancient organization of the land office, and the forms of proceeding which had become familiar to the people, and with which the nature of their titles was inseparably connected.

They also extended by a few months beyond the

time allowed by the devesting act, the validity of proprietary grants: enacting that persons entitled to any lands within the limits of the Indian purchases, by virtue of any grant, warrant or location, either in law or equity, before the 10th December 1776, on which patents had not issued, were to have patents, on payment of what was due, and interest and fees; and where surveys had not been returned to the former land office, on any grant, warrant or location, before that date, they might be obtained, by a mode designated, within one year, together with a patent. All purchase-money due on lands taken up before the 10th December 1776, was to be paid in four annual instalments: the land to be sold in case of neglect; unless in cases of actual settlements, where the owners had been driven off by the power of the enemy. The time of payment was subsequently extended, by numerous laws; and these compulsory provisions were never enforced.

Lands surveyed, and not returned, were to be returned in nine months under a penalty. The form of a patent was prescribed: and under it the land was to be held in absolute and unconditional property, reserving only the fifth part of all gold and silver ore for the use of the commonwealth.

The following restrictions were annexed:—No grant, &c., after the 4th July 1776, was to be valid for lands or lots within ten miles of Philadelphia, or within three miles of any county town in the state; nor was the act to extend to any warrant, grant or location for a greater quantity of land than five hun-

dred acres in one tract; or to any land or lots not granted in the usual forms of the land office, or to lands not within the Indian purchase.

These clauses were suggested by an apprehension of special grants having been made by the proprietaries to particular persons. The prohibition as to grants beyond five hundred acres, refers only to warrants, &c. unexecuted, where the parties were chargeable with neglect in obtaining surveys. They do not embrace a special order of the governor, on the 10th August 1769, for five thousand acres, on which surveys were made in 1773, and resurvey in 1791, by order of the board of property.(1)

Soon afterwards, in June 1781, a short supplementary act was passed, by which the word *location*, used in the first act, was defined to mean an application made by any person or persons for land, in the office of the secretary of the late land office, and entered in the books of that office, and sent to the surveyor-general's office. It further directed warrants, warrants of acceptance, resurvey and partition, to be signed by the president or vice president of the supreme executive council. This part of the statute has become inoperative since the change of the constitution in the year 1790.

Thus far the three officers constituting the land office were merely *ministerial* officers vested with spe-

(1) 2 Sm. Laws 15.

cified powers to do certain acts. But the want of a *judicial* tribunal to decide, in the first instance, controversies left pending, as well as new ones occurring, was soon perceived; and, in order to afford summary relief in such cases, the legislature, by the act of 5th April 1782, established this tribunal with a limited jurisdiction. Its decisions were not to be binding, but the remedy at law was reserved. It has proved beneficial in guiding the course of business in the land office, and bringing disputes to a point; and by subsequent laws its jurisdiction has been confirmed and extended.

Under the act of 13th March 1782, a district was laid off, called the *Depreciation* district, north and west of the Ohio and Allegheny rivers, and surveyed into lots, of from two hundred to three hundred and fifty acres each, for which certificates of depreciation, given to the officers and soldiers of the Pennsylvania line, were receivable in payment—and also the *Donation* district, north of the former, for the officers and soldiers entitled to land. A part of these districts was afterwards rejected, and struck off as bad land, and unfit for cultivation, and has since been called the *Struck district.*(1)

(1) See 6 Serg. & Rawle 155, for a full account.

CHAPTER X.

COMMENCEMENT OF SALES UNDER THE COMMONWEALTH BY THE ACT OF 1 APRIL 1784.

It was not till the year 1784, that the legislature thought proper to authorize the sale of the vacant lands. They had hitherto done no more, as we have seen, than to provide for the completion of titles formerly commenced, the fulfilment of engagements made during the war to officers and soldiers, and the organization of public agents to effect these objects. But after peace was signed with Great Britain, they deemed it expedient to expose to sale the remaining lands of the commonwealth, which had formerly been purchased of the Indians by the proprietors. The act for this purpose was passed on the 1st April 1784. It recited that all the citizens of the state should be placed on the same footing with respect to their titles and the legal demands of government, and that the time was come when it appeared necessary not only to increase the population of the state, but enable government to draw every possible advantage from the estates vested in them. It enacted that the land office should be opened for the sale of lands already purchased from the Indians, on the 1st July ensuing,

at the rate of £10 for every one hundred acres, with the usual fees of surveying, &c. excepting tracts surveyed westward of the Allegheny Mountain, which should be £3. 10*s.*;(1) and empowered the officers of the land office to perform every thing incident to their offices, with respect to receiving, filing and entering locations, granting warrants, receiving the consideration, directing copies of warrants or other rights, receiving returns, and issuing patents of confirmation *as heretofore, agreeable to the former customs and usages of the land offices.*

By this clause the legislature incorporated into the land office all the usages and practices existing under the proprietaries, and by virtue of this act, and the act of 1781, the whole land system under the commonwealth, as well in reference to the names and characters of the officers as their modes of transacting business, became identified with that which had prevailed in Pennsylvania from its settlement. Modifications were afterwards occasionally introduced, but its great outlines have been substantially preserved and continued.

The third section of this act of 1784 required that every applicant should produce to the secretary of the land office a particular description of the land applied for, with a certificate from two justices of the peace

(1) The £3. 10*s.* mentioned in this act, has been construed not to refer to the price of the land.

of the proper county, specifying whether the lands were improved or not, and if improved, how long since the improvement was made, that interest might be charged accordingly.

This provision was made to enable the officers to ascertain, whether land applied for was vacant or seated; and to charge interest where it had been occupied, from the commencement of the improvement. A mistake in obtaining such certificate from two justices of an adjoining county before the line was run between them, would not render it null, where the lands appear clearly to have been unimproved.(1) It was also said the words were only directory, and the want of a certificate, or an improper one, did not avoid the title.(2)

The quantity which one person could take up was enlarged by this act to four hundred acres.

(1) 2 Sm. Laws 193. (2) Ibid. 194.

CHAPTER XI.

FAIR PLAY MEN.

By the fifth section of the act of 1st April 1784, persons possessed of old rights, unsatisfied warrants, and other grants from the late proprietaries were confined, in locating them, to the lands already purchased from the Indians. It would seem that great doubts existed as to where the line, between the lands already purchased and those to be purchased, ran; and as commissioners had been previously appointed to make a further purchase from the Indians, this section goes on to direct them to ascertain the line. But by the act of 21st December 1784, the authority here given to the commissioners was explained away, and the line positively designated.

The reason of this legislation was, that at the purchase of 1768, one of the boundary lines in the Indian deed was termed Tiadaghton, and it was afterwards uncertain whether by this word was meant Pine creek or Lycoming creek. In this state of uncertainty, the proprietaries, from extreme caution, prohibited the making of any surveys beyond Lycoming creek, although a great number of applications of the 3d April

1769 were made for land beyond it, and within Pine creek. Many adventurers, notwithstanding this prohibition, settled themselves in this doubtful district and made improvements, and being beyond the pale of the ordinary authorities, and indeed having settled contrary to the orders of the proprietaries, they established a sort of legal authority of their own. They annually elected a tribunal, in rotation, of three of their settlers, whom they denominated *fair play men*, who were to decide all controversies and disputed boundaries. From their decision no appeal was allowed, and it was enforced by the whole body, who rose up en masse on the mandate of the court to carry their decree into execution. Every new comer was obliged to apply to this tribunal, and upon his solemn engagement to submit in all respects to the law of the land, he was permitted to take possession of some vacant spot.(1)

It is stated by Mr Smith, that in October 1784, at Fort Stanwix, the Indians declared that by Tiadaghton was meant Pine creek, and if so, all this territory was actually within the purchase of 1768, and titles there could not be objected to as within lands not purchased of the Indians. In the Indian deeds of October 1784 and January 1785, Pine creek is recognised as the boundary. Notwithstanding this, the legislature thought proper, in the act of 21st December 1784, to rescind the powers given to the commissioners, and maintain the ground taken by the proprieta-

(1) 2 Sm. Laws 195.

ries, by declaring Lycoming creek the boundary of the purchase of 1768. Of course all these settlements were unlawful. But, in consideration of the merits of settlers during the war, they provided for them there as well as elsewhere.

The act recites, that divers persons who had occupied and cultivated small tracts of land without the bounds of the purchase of 1768, and within the purchase made, or now to be made (referring to the late purchase in October 1784, and the one intended which occurred in January 1785), have, by their resolute stand and sufferings during the late war, merited that they should have the pre-emption of their respective plantations; and then enacts that persons, or their legal representatives, who had settled on the north side of the western branch of the Susquehanna, between Lycoming creek on the east, and Pine creek on the west, as well as other lands within the residuary purchase from the Indians (except the depreciation and donation lands), shall be allowed a right of pre-emption at the price fixed. But no person was to be entitled unless he had made such actual settlement before 1780, and no claim was to be admitted for more than three hundred acres, and allowance, surveyed together and in one tract; nor unless an application and tender of the purchase-money before the 1st November 1785.

These legislative proceedings put an end to the exercise of authority by the fair play men: the only

instance known in the history of our state of a self-constituted tribunal assuming the determination of private rights, and carrying its decrees into execution. It would seem that they proceeded with so much deliberation and cautious investigation of the rights of parties, under settled principles of law, that their decrees, when recurred to afterwards by the courts in controversies respecting title, were found to be generally just, and were confirmed.(1) It was not considered they could make boundary regulations respecting settlements: but one who was a party to the making of a regulation was himself bound by it.(2)

(1) 2 Sm. Laws 195.
(2) 1 Yeates 497. 2 Sm. Laws 196.

CHAPTER XII.

NEW PURCHASE AT FORT M'INTOSH IN 1784—1785.

The purchase of October 1784 and January 1785, brought into a disposable state a large tract of country both eastward and westward of the Allegheny mountain, comprising some of the most fertile lands in the state.

In what manner and on what terms these lands should be disposed of, seems to have occasioned some fluctuation of opinion in the legislature. Before the treaty, by the act of 1st April 1784, the legislature began to act in contemplation of the purchase. By the sixth section of that act it was declared it should be surveyed in tracts of not more than five hundred, nor less than two hundred acres, and put up at auction, with a credit of two years for the moiety. By the act of 21st December 1784, after the purchase, this was prohibited—the lands were placed on the footing of former purchases, with certain exceptions. It enacted that the land office should be opened for the sale of these lands (excepting the depreciation and donation lands), on the 1st May 1785, at the rate of £30 per hundred acres: the application and survey

not to exceed one thousand acres: and required every applicant, before the warrant issued, to produce to the secretary of the land office an acquittance for the purchase-money by the receiver-general.

The act further prescribed that warrants might be located on any vacant land (with the above exceptions), the survey not to exceed the number of acres expressed in the warrant, and the land to be located and surveyed in one tract or parcel.

At the next session of the legislature, by the act of 8th April 1785, a new policy was adopted. It was thought expedient to form an entire code, for the regulation of the sale and disposition of these lands, which resembles in some of its features the lottery system of 1769, and the instructions of 1765 to deputy-surveyors. It forms the basis of the titles to all the district of country embraced by it, and how far in some of its provisions it extended to prior purchases has been a subject of much dispute. The lands north and west of the Allegheny and Ohio rivers (where the depreciation and donation lands had been laid out), were excepted out of this act.

The act declared, that from the 1st May until the end of the tenth day thereafter, being the eleventh of the month, the secretary of the land office, upon the receiver-general's receipt being shown to him for the whole purchase-money, and not otherwise, was to receive all applications for lands in the late purchase, not exceeding one thousand acres in one application,

numbering them respectively, from number one to the last received: every application to set forth in words at length, and not in figures only, the number of acres asked by each applicant respectively. A lottery was then to be made, and priority to be given to the warrants according to the decision of the lottery, and to be dated on the day on which the drawing should be finished. All applications after the ten days were to have priority according to the order in which they came to the hands of the secretary.

By section third, all warrants issued for lands in the late purchase were to be directed by the surveyor-general to the deputy of some one district therein, to be executed, and the quantity of land specified therein surveyed and located, according to the tenor of such warrant. But if land to the satisfaction of such warrant could not be found within the district, the deputy-surveyor, on the desire of the person entitled thereto, was to certify, by writing indorsed on the warrant, in the presence of two subscribing witnesses, that the same had not been executed within the district, and then re-direct it to the deputy-surveyor of some other district, who, upon such warrant being produced to him, so certified, was to execute it.

By section fourth, no deputy-surveyor was to execute any such warrant, unless directed to him as aforesaid: nor to make surveys, until the expiration of thirty days after the date of the warrant, which for priority was dependent on the lottery. And, during

the last twenty of the said thirty days, each deputy was to keep his office open, and personally attend therein at least six hours of the said twenty days (Sundays excepted), for the purpose of receiving warrants, and to certify to the surveyor-general, on or before the 1st May, the place where he was to keep his office open, that all persons might be informed thereof. Every deputy who received any such warrant was to make fair and clear entries thereof, in a book to be provided by him, distinguishing the names of the grantees, quantities of land, number and date of each warrant, and the day on which he received the same, and whatever should be done concerning it, which was to be opened at all seasonable hours to each applier, who was entitled to certified copies of entries.

By section fifth, after thirty days from the date of any such warrant, the priority of which depended on the lottery, the deputy was to proceed to execute it, if required by the owner or agent, giving preference to the lowest number of the unexecuted warrants which had come to his hands, in case the owner or agent was ready to proceed with him, and direct him to the place where he desired him to execute it.

By section sixth, only warrants lodged with the deputy-surveyor, before the thirty days were expired, were entitled to priority; otherwise they were to be considered posterior to warrants lodged within the thirty days.

By section seventh, if any person having a right to a warrant in the late purchase, desired it to be located to a particular place, the deputy in whose hands it should be was to make an entry in his book, and survey it accordingly; unless some person entitled to priority by the lottery should insist on having his surveyed at the same place, in which case the warrant thus superseded was entitled to a second location as before, liable to a claim under another prior warrant, and so toties quoties, till the same was undisputed: *Provided*, that any person, before survey, might renounce his location, and withdraw his warrant, and have it certified and delivered to another deputy, and again in the same manner to another, till the quantity therein mentioned was surveyed and established.

Thus special and minute were the provisions to secure to holders of warrants the priority given by the lottery, where they employed due diligence in complying with the terms prescribed. These warrants specified no land, but only the number of acres. The place was to be fixed by entry in the books of the deputy-surveyor.(1)

The eighth section enacts that all warrants issued after (the priority of which depended on) the drawing of the lottery, were to be executed in the order, and have preference of survey as they were earliest, delivered to the deputy-surveyor, and for that purpose the

(1) See Mock *v.* Astley, 13 Serg. & Rawle 383.

surveyor-general was to register the warrants in the order they came to his office. And every survey of lands within the late purchase, made in pursuance of this act, and of *former acts*, for opening and regulating the land office, was to be *duly returned* into the surveyor-general's office, as soon as conveniently might be after survey made, *on tender of fees.* Surveys made on or before the 31st December in any year, and not returned into the surveyor-general's office on or before the last of March in the year next following, were to be void as to future surveys sooner returned and filed in the office of the surveyor-general; and if such avoidance happened by the neglect or default of the deputy, he was to be answerable to the party damaged for all damages therefrom, and the party was entitled to a new warrant to survey other land elsewhere.

The following section, the ninth, has occasioned controversy, as well as to its construction, as whether it is confined solely to the lands in the late purchase, or extends to all the then vacant lands of the state.(1)

By section ninth, every survey to be returned on any warrant issued after the passing of this act, shall be made *by actual going upon and measuring the land and marking the lines* to be returned upon such warrant, *after the warrant* authorizing such survey *shall come to the hands of the deputy-surveyor* to whom the same shall be directed, and every survey made there-

(1) See post, *Surveys.*

tofore shall be accounted *clandestine, and shall be void and of no effect whatever.* Every deputy was to give a written receipt, signed by him, to the person delivering the warrant, for the fee of six pence, setting forth the day, &c.

By section tenth, every deputy, in February in every year, was to make a general list, to be returned into the surveyor-general's office, of all warrants on which he made surveys during the preceding year, setting forth, in a summary way, the quantity of lands surveyed, &c.

Section eleventh—deputies to be appointed by the surveyor-general, subject to the approbation of council, for whom the surveyor-general was to be answerable. Each deputy to give bond, with two sureties, and take an oath, &c.

Section twelfth—districts to be formed, and their boundaries declared by the surveyor-general, with the approbation of council, which might be afterwards altered.

Section thirteenth—the islands in the new purchase, situate in the bed of the Susquehanna, and its east and west branches, and of the rivers Ohio, Allegheny and Delaware, together with the appropriated lands northwestward of the rivers Ohio and Allegheny, and the right of pre-emption of one thousand acres of land in the forks of Sinnemahoning, which was

thereby reserved to General James Potter, were excepted from application and survey: and all occupancy or claims thereof were declared void, saving the pre-emption of Montour's Island to General Irwin.

Section fourteenth prescribes the punishment for neglect or refusal to perform the duties enjoined, or other misbehaviour, besides liability to damages.

Section fifteenth—any survey made *by a deputy-surveyor out of his proper district* is declared void. The full amount of land contained in one warrant was to be surveyed in one entire tract, and so that it should not contain in front, on any river, more than half the depth of the tract: and the figure of every survey to be as near as possible an oblong of three times its breadth. Surplus land not exceeding one-tenth of the number of acres mentioned in the warrant, besides allowance, was admissible in the return, on paying for the same.

It has been held that this last section applies solely to the lands within this purchase.(1)

It may be remarked that this is the first act which provides specially for the appointment of deputy-surveyors and prescribes their duties. Heretofore they had been appointed, and acted under the same regulations as during the times of the proprietaries.

(1) 2 Sm. Laws 200, 201. 1 Yeates 206. 2 Serg. & Rawle 560. See post, *Surveys*.

About this time the limitation act of 26th March 1785 was passed, and its fifth section may be deemed a part of the legislation of that period in respect to claims then existing under titles issued from the land office. It is altogether retrospective in its operation, applying only to titles already issued.

It enacts that no person or persons that *now hath, or have*, any claim to the possession of any lands, &c., or the pre-emption thereof, from the commonwealth, founded on any prior warrant whereon no survey has been made, or in consequence of any prior settlement, improvement or occupation without other title, shall hereafter enter or bring any action for the recovery thereof, unless they or their ancestors or predecessors have had the quiet and peaceable possession of the same within seven years next before such entry or bringing such action: with a proviso giving five years longer to persons forced or driven away from their possessions by the savages, or by the terror of them, or quitting the state (except by the judicial authority) during the late war.(1)

The words, prior warrant, include a location. There is even more reason they should, because on warrants money was usually paid, but not on locations: *et omne majus continet in se minus.*(2) It must be a survey made for the party, not for another.(3)

(1) 2 Sm. Laws 301.
(2) 2 Sm. Laws 301.
(3) Ibid. 302.

The next act, of 30th December 1786, was passed for the purpose of supplying an omission in the act *of 1st April* 1784. It recites that the latter act made no reservation, nor gave any right of pre-emption to settlers in the purchase of 1768, but it was left in the power of all persons whatever to make applications and take out warrants for those lands—and it enacts that no warrants should issue for any tract on which a settlement was made, unless to such person or persons respectively who had made the settlements, until the 10th April 1788. This act to extend only to the purchase of 1768, and no settler to have the pre-emption of any tract exceeding four hundred acres, by reason of any such settlement.

It defines a settlement to be "an actual, personal resident settlement, with a manifest intention of making it a place of abode, and the means of supporting a family, and continued from time to time, unless interrupted by the enemy, or by going into the military service of this country during the war."(1)

Cases occurred of applications for lands, containing a particular description, according to the directions of the third section of the act of 1st April 1784, and warrants issued, on which payments were made, but the land applied for could not be obtained, on account of prior rights. To afford relief, the act of 29th March 1792 was passed.(2)

(1) 2 Sm. Laws 201.

(2) See also Act 6th March 1793; Act 3d April 1792, sect. 15; and 2 Sm. Laws 242, 249; cases of David Meade and J. B. Smith.

CHAPTER XIII.

ACT OF 3 APRIL 1792.

There is a further portion of Pennsylvania, lying to the north and west of the rivers Ohio, Allegheny and Conewango creek (excepted from sale by the act of 8th April 1785), comprising, in whole or in part, the present counties of Warren, Erie, Venango, Mercer, Crawford, Beaver, Butler and Allegheny. This district of country was purchased in the year 1784, except the greater portion of the county of Erie, which was part of the territory ceded to the United States by New York and Massachusetts, and was purchased from the United States by the State of Pennsylvania, in March 1792, for the price of $151,640 25 cents. The Indian cession is dated 9th January 1789.(1)

On the 3d April 1792, the legislature passed an act for the sale of these lands, which, in some of its provisions, differs materially from the laws of 1784 and 1785. It professes to offer only to such as should settle, and designates the kind and duration of settlement. This act will be always memorable for the

(1) 2 Sm. Laws 124.

controversy that arose respecting the proviso in the ninth section, on the construction of which the land-officers disagreed, and the judges of the state courts differed with each other and with the courts of the United States: a controvery which the legislature attempted in vain at the time to settle, and which for a long period impeded the improvement of the district, though it contained advantages for settlement and cultivation equal to the rest of the state. Time, however, and several healing acts of the legislature, have nearly quieted these disputes, and the titles are now for the most part secure.

The first section of the act of 1792 reduces the price of land in the purchase of 1768, and the preceding purchases (excepting such as had been previously settled on or improved), to fifty shillings per hundred acres: and the price, within the purchase of 1784, and lying east of Allegheny and Conewango creek, was reduced to the sum of £5 per hundred acres. The reason of this reduction probably was, that the best lands had been already selected, and that a large body of new lands was about to be offered for sale.

By section second, all lands lying north and west of the rivers Ohio and Allegheny and Conewango creek (except such parts as had been or should thereafter be appropriated to any public or charitable use) were offered for sale to persons who would cultivate, improve and settle the same, or cause the same to be cultivated, improved and settled, at and for the price

of £7. 10*s*. for every hundred acres, with allowance for roads.

By section third, upon the application of any person, who might have settled and improved or was desirous to settle and improve a plantation within the limits aforesaid, to the secretary of the land office, which application should contain a particular description of the lands applied for, there should be granted him *a warrant* for any quantity of land within the same, *not exceeding four hundred acres;* it also required the surveyor-general to cause the same to be surveyed, for the use of the grantee, his heirs and assigns, and *make return* thereof to the surveyor-general's office within the term of six months next following; *the grantee paying the purchase-money and fees.*

By section fourth, the surveyor-general was to divide the lands offered for sale into districts; and appoint one deputy for each district, who should give bond and security, and reside as near as possible to the district, and within sixty days next after his appointment certify to the surveyor-general the place where he should keep open his office. The deputy to make entry of such warrants in a book, distinguishing the name of the person, quantity of land, date thereof, and day of receipt; which should be open to applicants, and certified copies to be given.

By section fifth, the deputy was to survey warrants according to their priority: but not to survey *any*

tract actually settled and improved prior to the date of entry of such warrant with the deputy, except for the owner of such settlement. The deputy to enter surveys in a survey-book, open for inspection and copies.

By section sixth, every survey made out of the deputy's proper district was to be void. The full amount of land in a warrant to be surveyed in one entire tract, if the same could be found, in such manner and form, that it shall not contain in front on any navigable river or lake more than one half its length or depth, and to form the figure or plot to an oblong, whose whole length should not exceed twice the breadth. Ten per cent surplus allowed; to be paid for on patenting.

By section seventh, every February, the deputy was to return to the office of the surveyor-general plots of every survey, connected together in one general draught, so far as they might be contiguous, with the courses and distances of each line, the quantity of land contained in each survey, and the name of the person to whom surveyed.

By section eighth, the deputy, on application of a person who had made an actual settlement and improvement, and paying fees, was to survey and mark out the lines of the tract to which such person might, by conforming to the provisions of this act, become entitled by such settlement and improvement; provided such survey was not to exceed four hundred acres.

By section ninth, no warrant or survey to be issued or made, in pursuance of this act, for lands lying north and west of the rivers Ohio and Allegheny and Conewango creek, shall vest any title in or to the lands therein mentioned, unless the grantee has, prior to the date of such warrant, made, or caused to be made, or shall, within the space of two years next after the date of the same, make, or cause to be made, an actual settlement thereon, by clearing, fencing and cultivating at least two acres for every hundred acres contained in one survey, erecting thereon a messuage for the habitation of man, and residing, or causing a family to reside thereon, for the space of five years next following his first settling of the same, if he or she shall so long live: and in default of such actual settlement and residence, it shall and may be lawful to and for this commonwealth to issue new warrants to other actual settlers for the said lands, or any part thereof, reciting the original warrants, and that actual settlements and residence have not been made in pursuance thereof, and so often as defaults shall be made for the time and in the manner aforesaid, which new grants shall be made under and subject to all and every the regulations contained in this act.

Provided always nevertheless, that if any such actual settler, or any grantee, in any such original or succeeding warrant, shall, by force of arms of the enemies of the United States, be prevented from such actual settlement, or be driven therefrom, and shall persist in his endeavours to make such actual settlement as

aforesaid, then, in either case, he and his heirs shall be entitled to have and to hold the said lands, in the same manner as if the actual settlement had been made and continued.

By section tenth, the lands actually settled and improved, according to this act, were to remain chargeable with the consideration-money and interest, from the date of the improvements: and if such actual settler, not being hindered as aforesaid by death or the enemies of the United States, neglected to apply for a warrant for ten years after the act, the commonwealth might grant them to others, reciting such defaults: no warrant was to issue until the payment of the purchase-money.

Section eleventh relates to the board of property.

Section fifteenth relates to holders of unsatisfied warrants.

On the 22d April 1794, the legislature suspended the further sale of lands under the foregoing act, except in certain cases. They prohibited the reception of any application from that time for unimproved land in the triangular tract on Lake Erie. They also prohibited the issuing of warrants, after the 15th June 1794, for lands there, except in favour of persons claiming by settlement and improvement thereon: and ordered, that all applications on file after the 15th June, for which the purchase-money was not paid,

should be void: with provisions in favour of persons to whom balances were due on unsatisfied warrants issued before the 29th March 1792, and also in favour of improvers.

And by a supplement of the 22d September 1794, they enacted that no applications should be received *for any lands in the commonwealth*, except those whereon a settlement had been made, grain raised, and a person or persons residing thereon.(1) They declared all applications since the 1st April 1784, for which the purchase-money had not been paid, to be void: with savings of claimants under the act of 29th March 1792 as to the time of patenting, and in favour of actual settlers.

Under the act of 3d April 1792, many warrants were taken out, immediately after its passage, for lands in the territory which it offered for sale. A company, called the Holland Company, composed of citizens of the United Provinces, made large purchases. They took out one thousand one hundred and sixty-two warrants, and became prominent in the controversies that ensued. Neither they, however, nor others, it is stated, were able to effect the settlements mentioned in the act, within two years, owing to the peculiar state of the country. There existed,

(1) This act was repealed as to the purchase of 1768 and the previous purchases on the 28th March 1814, and as to the purchase of 1784 on the 10th March 1817.

at the time this act was passed, a war between the United States and the Indian nations, in the western country. The armies of the United States experienced signal defeats from the savages. In 1791, General Harmar was defeated: and on the 4th November, in the same year, General St Clair was defeated, with great slaughter. The war continued until the ratification of General Wayne's treaty with the Indians at Fort Greenville, on the 22d December 1795, and that country was exposed during the whole interval to the repeated incursions of the savages, who killed and plundered the whites when unable to defend themselves. Until 1796, it was deemed unsafe for families to cross the river into the newly granted lands.(1)

In the mean time very opposite opinions began to manifest themselves in relation to the construction of the ninth section of the act. On the one side it was contended, that the conditions of actual settlement and residence, required by the act, were dispensed with, on account of the prevention for two years after the date of the warrant by Indian hostilities; and that the warrant-holder was not bound to do any thing further, but was entitled to a patent. On the other side it was insisted, that the right under the warrant was forfeited, at the expiration of the two years, without a settlement, and that actual settlers might then enter on such tracts, and hold them by making a set-

(1) 2 Sm. Laws 216. 2 Sm. Laws 205, 229, 212.

tlement. On this and other constructions, numbers of persons from time to time entered on the lands of the warrantees, and claimed to hold under the act, as settlers, after a forfeiture.(1)

The board of property, in Governor Mifflin's administration, till 1800, entertained the first opinion, and by the advice of the attorney-general (Ingersoll) devised a certificate, termed a prevention certificate, applicable to warrantees and settlers, on the production of which at the land office, signed by two justices, a patent issued, though there was no settlement or improvement. The following was the form:—"We do certify, that A B (the warrantee or settler) hath been prevented from making a settlement on a tract of land, containing four hundred acres, situate, &c., conformable to the proviso contained in the ninth section of the act entitled an act, &c., passed the 3d April 1792, by force of arms of the enemies of the United States; and that he, the said A B, hath persisted in his endeavours to make such settlement." The patent recited, that the party had made it appear to the board that he was, by force of arms, &c., prevented, in the words of the certificate. The Holland Company received many patents, under prevention certificates of this kind.(2)

A change having taken place in the land office, after the election of Governor M'Kean, in October

(1) 2 Sm. Laws 222. (2) 2 Sm. Laws 215, 214.

1799, the new officers gave a different construction to the proviso. They did not consider the resolutions and proceedings of the former board binding on the new board, and the secretary of the land office refused to issue further patents to the Holland Company on prevention certificates.

In the meantime the question had begun to engage the attention of the courts, and the same contrariety of sentiment was manifested. In May 1799, the opinions of two judges, YEATES and SMITH, were delivered in the cases of Morris *v.* Neighman and Morris *v.* Sheiner. The plaintiff claimed under two warrants, for lands on the waters of Big Conequanesing, dated 4th March 1793, and surveys, 12th and 19th November 1794. It appeared, that when these surveys were made, with many others, for the plaintiff, there had been erected on all the tracts seven small cabins, by persons who intended thereby to hold the lands: and the agent of the plaintiff, to prevent dispute, bought the different claims for 110 dollars. On the 25th July 1796, he took out a millwright to build a mill on the lands, then occupied by Neighman, and demanded possession. The latter permitted him to level the water, but would not suffer him to do other work, as he insisted the plaintiff's warrants were dead, for want of settlements within the two years. At this time Neighman had a small cabin, and about one acre of timber deadened, but had no family on the ground. On the 1st March 1797, he settled with his family on the land, and before the bringing of the

ejectment had built a large cabin, sixteen feet by eighteen, and a barn, cleared ten acres of ground, and had begun to make the dam and forebay of his mill, which he afterwards completed. Sheiner, the other defendant, came with his family, on the other tract, on the 8th April 1797, under Neighman, who was bound to make him a good title to one moiety of it. Just as he was beginning to work, one Rudolph, a tenant, who had accepted a lease under the plaintiff, warned him off, but he refused to go, and would not permit Rudolph to take possession.(1)

Two questions were made: 1. Whether the plaintiff had forfeited his right under the warrant by not making his settlements on the lands within the two years. 2. Whether, if a forfeiture was incurred, the defendant might not enter and take advantage of the condition broken.

The court held, that as the war with the Indians continued until the ratification of the treaty of Fort Greenville, on the 22d December 1795, such was the state of the country, that actual settlements could not be made with any reasonable safety: and, therefore, the warrantee was excused from performing the condition of settlement until that period, and it was only from and after that period he was to commence making a settlement, and to persist in his endeavours. On the second question, they held, that even if a for-

(1) 4 Dall. 209.

feiture was incurred by non-settlement within two years from the date of the warrant, no individual could take advantage of the condition broken; but by the express provision of the ninth section, it must be an act of the commonwealth, by issuing a new warrant, which operated to devest the estate of the former holder, and re-grant the lands anew. On both grounds, therefore, they decided in favour of the plaintiff.(1)

The Holland Company being refused patents at the seat of government, as has been stated, applied to the supreme court for a rule to show cause why a mandamus should not be issued, directing the secretary of the land office to deliver patents to the company for various tracts, and the case was argued at March term 1800. The Court differed in opinion. SHIPPEN, C. J. held, that if the grantee was prevented, during two years from the date of the warrant, from making a settlement, by force, or by reasonable dread of the enemies of the United States, then the settlement and residence for five years were altogether dispensed with, and his title to the land complete, and a patent might issue accordingly, agreeing in the construction by the land office in Governor Mifflin's time. YEATES, J. (and SMITH, J. concurred) held, that if the warrant holder was prevented by force from making the settlement and residence within the limited periods of two and five years, yet he was bound to persevere in his efforts until the settlement and residence were

(1) 2 Sm. Laws 211. S. C.

actually accomplished; and the rule was discharged. Judge BRACKENRIDGE gave no opinion, having been concerned for the relators while at the bar.(1)

This decision, owing to the dissent of the Chief Justice and the absence of an opinion from Judge BRACKENRIDGE, was little calculated to establish a rule that would be acquiesced in, when such powerful interests and numerous claimants were arrayed against each other. The excitement on the subject pervaded the state, and increased, and under an impression that the original warrantees were barred by their default in not performing the conditions of *settlement*, applications were, from time to time, made to the land office for new warrants for tracts formerly granted. But the legislature, to prevent the confusion and litigation that was likely to ensue, and with a view to effect a speedy determination of the question by the judiciary, passed the act of 2d April 1802, purporting to be an act to settle the controversies that had arisen. They directed the judges of the supreme court to meet and devise a form of action for trying and determining by the court and jury, certain proposed questions, and to transmit the same to the governor, who, with the assistance of the attorney-general, was to carry them into effect. They prescribed the mode in which these questions were to be decided, and directed the judges to admit parties, what notice was to be given, &c. And in the

(1) Comm. *v.* Coxe, 4 Dall. 170.

mean time, as the issue of new warrants, in the nature of vacating warrants, might increase the perplexity of affairs, in case they should be held not to be legal, they adopted another course: they prohibited the issuing any new warrant for land already granted (which had, in some instances, been done under the then administration), and directed the application to be filed, and to have the same effect as if warrants had been issued: and if the opinion of the court and jury were in favour of such applicants, then the new warrants were to issue. Such warrants were only to embrace actual settlers in possession of the land.(1)

In the preamble of this act, there is a recital, that "it appeared from the act of 3d April 1792, that the commonwealth regarded a full compliance with the conditions of settlement, improvement and residence, as an indispensable part of the purchase, or consideration of the land itself."

The questions stated in the act are the following:

1. Are warrants heretofore granted under the act of 1792, valid and effectual in law against this commonwealth, so as to bar the commonwealth from granting the same land to other applicants, in cases where the warrantees have not fully and fairly complied with the conditions of settlement and improvement and residence required by the act, at any time before the date of the said warrants respectively, or

(1) 2 Sm. Laws 219.

within two years after? 2. Are the titles that have issued from the land office, under the act aforesaid, whether by warrant or patent, good and effectual in law against this commonwealth, or any person claiming under the act aforesaid, in cases where such titles have issued on the authority, and have been grounded on the certificates, of two justices of the peace, usually called prevention certificates, without any other evidence being given of the nature of such prevention, whereby, as is alleged, the conditions of settlement, improvement and residence required by the said act could not be complied with?

The Holland Company declined this special hearing. For this measure they presented their reasons to the court. They stated that they could not approve of the terms of the preamble of the act, by which the legislature had undertaken to declare the meaning and construction of the original contract; nor could they admit the right or propriety of dictating a new, and perhaps unconstitutional mode of settling a judicial question, without the assent of all the parties in interest. They stated that the merits of the case involved the following considerations. 1. Whether the company had complied with the conditions of the ninth section of the act. 2. Whether the reasons assigned for a non-compliance with the condition bring their case within the proviso. 3. Whether the proviso operates, in cases brought within its terms, to discharge the condition entirely, or only to enlarge the time for performing it. 4. Whether the company

have so persisted in their endeavours to perform the condition as to be still within the benefit of the proviso. 5. Whether the government, by prescribing the evidence on which patents had actually issued in cases brought within the proviso, could now take advantage of the forfeiture for a supposed non-compliance with the original condition. But the questions proposed by the legislature excluded an investigation and decision, except upon the following points: 1. Whether, if the Holland Company have not performed the condition on which the warrants originally issued within the two years, though the residence could not be completed till the expiration of five years, the state is barred from granting the same lands to other applicants. 2. Whether patents having issued on the evidence of prevention certificates alone, they are not void, so as to authorize the state to sell the same land to other purchasers. On the first of these points, they observed that it never had been contended that the Holland Company had performed the condition within two years, but only that the condition was discharged by the operation of the proviso on the facts of their case: particularly the fact that an Indian war subsisted for several years beyond the term of two years specified in the act of assembly. And on the second point, though the prevention certificate being prescribed by the government ought to be binding on them, yet the patentees had other evidence to prove the circumstances entitling them to hold the patents they had received.

The judges met at Sunbury in November 1802,

when a jury was sworn. The Chief justice (SHIPPEN) did not attend. No counsel appeared for the warrantees. The charge of the court was delivered to the jury by YEATES, J. The court held, that the prevention by force of arms of the enemies of the United States, did not annul the conditions of actual settlement and residence, but that it suspended the forfeiture by protracting the limited period. Still the conditions must be performed *cy pres*, or as near as possible. Whenever the terror from the enemy subsides, the grantee must honestly persist in his endeavours to make such actual settlement, improvement and residence until they are completed. Therefore the warrants referred to in the first question were valid or not, according to circumstances. Every case depended on its own circumstances. On the second point they held, that patents and the prevention certificates recited in them were not conclusive evidence of the patentees having performed the condition, but the fact might still be proved *aliunde*. A verdict passed for the plaintiff.(1)

Whilst these proceedings were going on in the courts of the state, suits were brought by the Holland Company in the circuit court of the United States, in order to obtain the decision of the United States courts on these much contested points. The legislature of Pennsylvania, by an act passed the 3d April 1804, authorized the employment of counsel to attend there

(1) 2 Sm. Laws 220.

to the interests of the state, which consisted in the right of resuming the land for a forfeiture of the condition, if that had happened, and also in the pacification of the territory and settlement of a dispute that had occasioned so much distraction and litigation. By the same act, the settlers for a time were relieved of one point which the supreme court decided at Sunbury, namely, that the state only had a right to enter for the condition broken, and that no individual could avail himself of the forfeiture, and sustain his entry and settlement against the warrant-holder. For it enacted, in the first section,(1) that applications by actual settlers should, *for two* years, entitle the applicant, his heirs, &c. to all the benefits that an original or vacating warrant would entitle them to, and that the settler might avail himself in suits of his settlement and improvement, as fully as if he had obtained a vacating warrant, with a saving as to contracts or agreements, &c.(2)

In 1805, the case of Heidekoper's Lessee *v.* Douglass, was tried in the circuit court of the United States, in which the plaintiff claimed under a warrant to the Holland Company, dated 18th April 1793, and the defendant as an actual settler. Judge WASHINGTON, in his charge to the jury, coincided generally with the construction given by the supreme court of

(1) This section was continued till the 1st April 1807 by the act of 28th March 1806, and then expired. 4 Sm. Laws 11. See 5 Watts 500.

(2) 2 Sm. Laws 224.

Pennsylvania. Judge PETERS differed in opinion. The case was removed to the supreme court of the United States, where MARSHALL, C. J., delivered the opinion of the court, that the grantee by warrant, who by force of arms of the enemies of the United States, was prevented from settling and improving the land, and from residing thereon from the date of the warrant, 10th April 1793, until the 1st of January 1796, but who during such period persisted in his endeavours to make such settlement and residence, was excused from making the actual settlement prescribed by the ninth section of the act, and entitled to a fee simple in the land. A verdict subsequently passed in the circuit court for the plaintiff.(1)

The next case in which these points were agitated was Hazard's Lessee *v.* Lowry, in 1806, before the supreme court in bank, TILGHMAN, C. J. The plaintiff's warrant bore date the 13th April 1792; his survey was made on the 17th June 1794, more than two years after the date of the warrant, but no entry was made at that time by the plaintiff, or any one under him, with a view to settlement. The defendant entered on the land in July 1795, and the plaintiff brought this ejectment to September 1797, more than a year and a day after General Wayne's treaty, but less than two years.

TILGHMAN, C. J., delivered the opinion of the court,

(1) 2 Sm. Laws 225. 4 Dall. 392.

agreeing with their former opinion, that if the settlement was prevented by force of arms of the enemies of the United States, the interest of the grantee did not revest in the commonwealth, although the settlement was not made within two years from the date of the warrant: and added, that if the danger excused the settlement within that period, so it excused the deputy surveyor from surveying the land. That it had been decided at Sunbury that a reasonable time was to be allowed to the warrantee to make a settlement after the prevention ceased: that reasonable time ought to be not less than two years from the pacification by the treaty, by which the war was concluded. And the defendant having entered during the time the plaintiff had a right to hold the land for the purpose of making a settlement, was a wrong-doer and subject to be removed by entry or ejectment.

These principles have ever since been maintained in the courts of the state.

After this period it would seem that a disposition to compromise manifested itself among the contending claimants; and the legislature, to facilitate it, enacted that the titles of both warrant-holder and settler should be confirmed by issuing patents to them, on agreement between them made, or on the warrantee's releasing to the settler one hundred and fifty acres of the tract and by other provisions. Acts 20th March 1811 and 22d March 1813.

On the 14th March 1814, an act was passed for the

purpose of *compelling* the warrant-holders to release one hundred and fifty acres to the settler. If he should not, he was required to prove, on a trial, strictly that he went on the land, or attempted to go, and was personally prevented. The constitutionality of this act has been called in question incidentally, but no direct decision has been made on the point.(1)

The *actual settlement* required by the act of 1792, is the same as that declared by the act of 30th December 1786,(2) but need not be continued beyond the five years required by the former act, to constitute title under it.(3)

The decision in Morris *v.* Neighman, before mentioned, that no other than the state could take advantage of a forfeiture incurred by reason of non-settlement by the warrantee has been confirmed, notwithstanding some recent conflicting cases. The points were comparatively of less importance, because by the act of 9th April 1833 the provisions of the act of 3d April 1792, requiring a settlement by residence, are repealed in cases of surveys returned and purchase-money paid: saving existing rights.(4)

(1) See 5 Watts 392, 497.

(2) 1 Yeates 171.

(3) 3 Watts 1.

(4) See 2 Yeates 450. 3 Yeates 273. 4 Dall. 170. 4 Yeates 576. 7 Serg. & Rawle 303. 1 Serg. & Rawle 74. 14 Serg. & Rawle 34. 5 Watts 392, 497.

CHAPTER XIV.

FORMS OF WARRANTS.

THERE was no uniform frame of warrants in early times. They sometimes expressed the terms of the contract, and frequently did not. Previous to the year 1733, they contained the clause, "if not seated by the Indians;" but in the warrants subsequently issued by Thomas Penn, this clause was omitted.(1)

Most generally they ran thus: "that the purchaser should comply with the terms within six months, or the warrant should be void."(2)

The forms of warrants differed in other particulars more important. The ordinary warrant issued, in the first instance, on the request of a person desiring to purchase, and embraced in substance an authority to make a future survey and return, at a certain price and on certain terms. But after a survey already made, under some of the informal modes that prevailed of initiating titles, in early times, a *warrant of acceptance* was issued. The same kind of warrant was

(1) 2 Sm. Laws 138, 139. See Appendix. (2) Ibid.

adopted in the regulations of 1765, when there had been an application, and order of survey, and survey thereon, and return, and payment.

There was another kind of warrant used to some extent under the proprietaries, and many titles held under it, called a *vacating warrant.* This originated about the year 1738. It recited, that "a former warrant of a certain date had been granted for the land, and that the warrantee had not complied with the terms." The proprietaries, therefore, vacated the old warrant, and directed a survey to be made of the land to the new warrantee, or (where a survey had already been made) that it be returned to his use. Sometimes a warrant of this kind recited a transfer from the original warrantee. Sometimes money, which had been paid on account, was carried to the credit of the new warrantee, probably under some arrangement with the former one. But in many cases no money had been paid, and no recital explains the grounds of the new warrant.(1)

Whether the common provision in the warrants issued by the proprietaries, that, "if the agreement was not fulfilled within six months, the warrant and survey should be void," was a condition, on the non-performance of which they could annul it and issue a new warrant, has not been decided. If the proprietaries had this strict right of forfeiture, it would seem

(1) 2 Sm. Laws 154, 151.

they did not exercise it. Where they issued vacating warrants, there is reason to think it was only in favour of a person holding under the original warrantee, by transfer or sale, or when such person had relinquished his claim, or been guilty of great laches in pursuing it. And after a lapse of time, and possession under a vacating warrant, the presumption would be, that there were special reasons for issuing it.(1)

Another form of warrant was of a mixed kind, partaking partly of the nature of a vacating warrant, and partly of a warrant of acceptance. "Whereas a warrant, dated the 6th January 1737, was granted to J. S. for two hundred acres of land, &c., but the said J. S. did not comply with the terms of the said warrant, whereby the same became void; nevertheless his executors took upon them to sell the said land at public vendue," &c. It then recited that the purchaser procured a survey to be made to A B, "who hath humbly requested us to grant him a warrant for the acceptance of the said survey, and we, favouring his request," &c.

Warrants were signed by the proprietary when present, and, if absent, by the governor, as chief commissioner of the board of property. From the beginning of October 1754 to the 20th August 1756, Robert Hunter Morris was governor, and many warrants

(1) 2 Yeates 81. 2 Sm. Laws 152.

were made out and entered in the warrant book in the secretary's office, and sent to the governor to sign, but were not signed. A warrant of this description, and survey thereon, were held valid by the board of property, in 1768, Governor John Penn being present, though no money was paid on it, in preference to a subsequent warrant for the land, issued prior to the return of survey on the first, and money paid. A similar warrant appeared in a case before the court, but the objection was removed, by proof that the money was paid.(1)

(1) 1 Sm. Laws 153. 3 Yeates 528. 4 Yeates 215.

CHAPTER XV.

WARRANTS AND LOCATIONS, DESCRIPTIVE OR NOT.

Controversies have been produced by the manner in which lands were described in warrants and locations. From the want of artificial boundaries, and the vague names and great extent of natural ones, such as rivers, streams and mountains, in a country little known or explored, it was difficult to describe accurately on paper the exact situation of the land intended, and in some cases, where it might have been done, there were carelessness and want of precision in the description. Conflicts arose amongst different claimants of the same tract, and warrants and locations received a classification, under which they were differently denominated, and vested different rights in the parties.

1. A *descriptive* warrant may be defined to be one, which, by reference to external marks, boundaries or circumstances, points out the land with such certainty that it could properly be executed only on one spot.(1)

(1) 4 Binn. 58. 8 Serg. & Rawle 186. 2 Serg. & Rawle 398. 1 Penn. Rep. 74. 1 Yeates 298, 218, 521.

It is of two kinds; either precisely certain, as where it designates the lines and boundaries with perfect accuracy, or, certain to a common intent, as where it describes the land with such reasonable certainty, as is sufficient to distinguish it from all other land. A location for "three hundred acres, including an improvement made by J. S. in 1762," is of the latter class; because the reference to the improvement makes the place certain.(1) In these cases the title commences from the date of the warrant or location, provided there be no negligence or laches.

2. If, as is often the case, the description is not applicable to a particular spot, but may be surveyed on any portion of a larger tract or circuit of country, it is termed *vague*, *loose* or *indescriptive;* but yet if the party has placed it in the hands of the deputy-surveyor, and he has by a survey reduced it to certainty, before any other appropriation by an adverse claimant, it may, if returned in season, hold the land, and the title dates from the survey. But if before such survey, another person has had a survey on a warrant or location, though it be of a later date, it may prevail.(2)

An application in 1766, "for three hundred acres, including two licks, beginning about five rods below them on a creek," is indescriptive, and title commences from the survey. So when an application of the 3d

(1) 4 Binn. 58, 163. 12 Serg. & Rawle 129.

(2) 2 Sm. Laws 187. 4 Binn. 58, 163. 12 Serg. & Rawle 129.

April 1769 was "for three hundred acres of land, up the Monongahela, on the west side, near or adjoining General Braddock's road," it was held not precisely to describe the lands. A warrant was for land on the north side of a creek, about two miles from the fording. It was surveyed at some distance from the creek, but on the north side. This is a loose indescriptive warrant, on which title commences from the date of the survey.(1)

3. When the land surveyed is in another place, plainly different from the land described or referred to in the warrant or location, it is called a *shifted* warrant or location: and if such survey be returned in a reasonable time, and accepted at the land office, it constitutes a good title as against any other warrant or location taken out subsequent to such return.(2) Sometimes it is termed a *lost* location, the land intended proving to have been taken by a prior one. It was generally the practice under the proprietaries to allow the party to have other vacant land surveyed, where that originally contemplated was previously appropriated by another person, or other land was preferred, it not being material to them what particular place was selected from amongst the large bodies of vacant lands they held.

Such shifted warrant or location, duly surveyed

(1) 6 Serg. & Rawle 130. 1 Yeates 287. 10 Serg. & Rawle 214.

(2) 12 Serg. & Rawle 130. 4 Binn. 58, 163. 2 Binn. 170. 2 Sm. Laws 188, 189. 1 Binn. 246. 4 Dall. 210.

and returned, is also good against any other warrant or location taken out after such survey, by one having actual knowledge of such survey before its return.(1) For either legal notice of the survey, by the return filed of record in the land office, or actual notice of it to the party, is sufficient to inform him of the previous appropriation of the land, and to take away his equity.(2) But, on the other hand, if such survey on a shifted location was not known to one who has obtained another warrant, descriptive of the land, the latter would be preferred, even though before his survey he should acquire the knowledge of the previous survey. If, however, the warrant is indescriptive, or apply to other land, no priority vests under it: for the owner of it is in the same situation as the owner of the lost location; that is to say, his title dates from his survey, and having knowledge before that of the prior survey, his equity is gone.(3)

The rules for the construction of warrants and locations are, that they must be judged of by what appears on their face: they cannot be explained by parol evidence, on the part of the claimant, of the declarations of the land officer, or of the applicant, as to what land was meant to be embraced. Of this, third persons could have no notice, and would be misled by trusting to the official proceedings. But evidence of the local situation of the ground, the natural or arti-

(1) 12 Serg. & Rawle 130. 4 Binn. 58, 163. 2 Binn. 170. 2 Sm. Laws 188, 189. 1 Binn. 246. 4 Dall. 210. (2) Ibid.
(3) 2 Sm. Laws 245.

ficial boundaries, the names by which streams or hills were known, may be given, to show what land was meant by the description employed.(1) On the same grounds, the terms contained in the receiver-general's receipt, remaining in the party's custody, are not evidence against others who applied before his survey.(2)

A mistake in a warrant does not vitiate it. As if, before the line between two contiguous counties is run, the warrant states the land to be in one, and it turns out to be in the other.(3)

By the act of 4th April 1805, it was made the duty of all persons then holding, or that might thereafter hold, unexecuted land warrants, to file or enter the same with the surveyors of the proper districts, within two years after the passage of that act, or within two years after their date; and on failure thereof, such warrants were not to have any force or effect against a warrant of later date, nor against an actual settler on the lands.

(1) 2 Sm. Laws 182, 245. 2 Yeates 284. 4 Yeates 262. 3 Watts 469.
(2) 2 Sm. Laws 183.
(3) Ibid. 2 Yeates 148. 1 Yeates 162. 13 Serg. & Rawle 361.

CHAPTER XVI.

SURVEYS.

For superintending the execution of surveys, an officer called the Surveyor-general existed during the proprietary government, and since. He is now appointed by the governor for a term of three years, and keeps his office at the seat of government. To him belongs the appointment of deputies. On being furnished with an official copy of the warrant, or with an order of survey of an application, the Surveyor-general, or deputy surveyors, or their assistants executed the survey by going on the ground, and marking out the boundaries of the tract, and thereby reducing to certainty the portion which was abstracted from the mass of vacant lands, and appropriated to the warrantee or applicant. Without some warrant or authority from the land office first shown, a survey is of no effect, though made by the regular deputy surveyor, and purporting to be by order.(1) A designation of boundaries is requisite, in order that the claimant and others may know his property, that it may be capable of grant, devise, descent, and other rights and burdens

(1) Wilson *v.* Stoner, 9 Serg. & Rawle 39.

of real estate: that persons desirous of taking up vacant land may do so without interference, and that the commonwealth may charge the unpaid purchase-money on the land.

Though there are special cases in which a descriptive warrant, or application may vest a title without survey, as where the party has taken possession under it,(1) yet, generally speaking, it is the duty of the grantee to show a survey, and that it was returned. The warrant or order was not an absolute grant of the land: it was an authority enabling the party to acquire it, on the performance of certain conditions stipulated in the warrant, and in the regulations of the proprietary and acts of assembly. By these a certain time was fixed, within which the grantee was bound to fulfil these conditions, by obtaining a survey and paying the fees of the deputy, so that it might be returned. In many instances adverse rights obtained by third persons have prevailed in consequence of the neglect of the first claimant in these respects. And by the act of 4th April 1805, it is expressly declared, that unexecuted warrants not filed or entered with the deputy surveyors within two years, should have no effect against a later warrant or an actual settler.(2)

It has been considered the business of the owner of the warrant or application to procure the survey to be made, by going to the deputy surveyor and showing the

(1) 6 Serg. & Rawle 124. (2) 4 Sm. Laws 255.

land to be surveyed, furnishing provisions and chain-carriers, and paying the deputy's fees; and the deputy is bound to conform to the requisitions of the party where he is not otherwise controlled by the laws.(1) The deputy on receiving the warrant or order entered it in a book containing a registry of the warrants or orders that come to his hands. This book is a sort of record, to which any one may resort for information concerning land titles, and, indeed, to which those interested are bound to look for information as to surveys. The deputy may, if he pleases, go to the ground and make the survey, without the particular request of the party; and in the absence of any objection, it will be considered, when duly returned, as done with the assent of the party. But, in general, he acts on the request of the owner or his agent, who points out the land, and may take less than the warrant calls for, or more, not exceeding a certain per centage. He may direct the courses and distances and shape of the survey, unless when fronting on a navigable river, and then the comparative front and depth are prescribed.

To secure the legal rights of parties, and the correct and impartial discharge of their duty, deputy surveyors are required to take an oath and give security; and various regulations for their government were established by the proprietaries, and since by acts of assembly. In 1701, instructions were given to them, and those of the year 1765 were the results of long experience, and contain full and precise directions as

(1) 4 Yeates 107.

to the manner in which they were to execute their trust, and have since been incorporated into the land system of the commonwealth.(1) The acts of assembly subsequent to the revolution contained additional provisions, some of which were general in their application, others embraced only the lands in the purchase of 1784, or those offered for sale by the act of 3d April 1792.

The act of 8th April 1785, opening the land office for the sale of lands in the new purchase at Fort M'Intosh, allowed them to be taken up only by warrants on which the purchase-money was first paid; and the ninth section declares, that every survey returned on any warrant issued after the passage of that act, shall be made by actual going upon and measuring the land, and marking the lines to be returned, after the warrant authorizing such survey shall come to the hands of the deputy surveyor, to whom the same shall be directed; and every survey made theretofore shall be accounted clandestine, and shall be void, and of no effect whatsoever.

Much controversy has subsisted, whether this section extended to all the vacant lands of the commonwealth at the passage of this act, or was limited to those in the late purchase. At length, in 1829, it was decided, that it extended to all vacant lands, and that a survey made before the warrant came to the hands of the deputy surveyor was void, and is not rendered

(1) 13 Serg. & Rawle 383.

valid by the receipt of the purchase-money and acceptance of the survey by the officers of the commonwealth.(1) The act of 3d May 1832 has since provided, that surveys made before that time should be valid, although made on the ground before the warrants were placed in the hands of the deputy surveyor.

The directions just spoken of relate to the *time* of making the survey. As to the *manner* of making it, the directions that the survey should be made by actually going on the ground and marking the lines to be returned, are equally extensive. They are similar to the instructions of 1701 and 1765, which ordered the deputies not to make return of any survey but what had been actually made by them on the spot; and they were to take care that all outlines and bounds should be fairly and visibly marked, before they quitted the field.

The directions in the act as to the manner of making the survey may be deviated from in various ways.

1. The deputy may never go upon the ground at all, but content himself with plotting out a supposed survey in his chamber, with all the appearance of an actual survey, and return it to the surveyor-general. This is termed a chamber survey, and is a manifest breach of the law and of the officer's duty. Such survey, not returned, is utterly worthless and void. But if returned to the office, and accepted, as has

(1) Barton *v.* Smith, 1 Rawle 403.

sometimes been the case, it is not void so as to be treated as a nullity, and so that the warrant may be again surveyed as if retaining all its original validity.(1)

2. The deputy may go on the ground and run the courses and distances, but not mark the lines on the ground. This is also an illegal survey,(2) for the marks on the ground really constitute the survey, and determine the rights of the party: the plot or diagram returned, being only evidence of it; and when they differ, the latter must yield to the former. As if the courses and distances are found, on examination, to vary from the marks on the ground, the latter govern, be they more or less in quantity than the return. This is the common rule as to all conveyances. The boundaries described are the limits of the property transferred, not the number of acres, where they differ.

3. The deputy may go on the ground, and yet not run and mark all the lines which he returns, and in some instances the survey may be good.

It has not been usual for deputy surveyors to run the closing line, but to leave it open, calculate the quantity of land included in the lines, and correct the survey, where necessary, by it, by shortening or lengthening one of the lines so as to correspond with the

(1) Oyster *v.* Bellas, 2 Watts 307.
(2) 1 Yeates 28.

warrant, or quantity desired. They then closed the survey on paper.

Again, where any of the boundary lines of the tract to be surveyed have already been marked on a former occasion by a deputy surveyor, it is not necessary to mark them again. Indeed it would be improper to do so, as the new marks might occasion confusion. In such case the old lines may be adopted, and plotted in the new survey and returned. This has occurred where the lands had been formerly surveyed as depreciation lands by legal authority, and not appropriated to any person. When these lands were afterwards returned into the general mass of the vacant lands of the commonwealth, and liable to be taken up in the same manner, a warrant might be applied to a tract already surveyed, and returned. So where the tract is bounded on three sides by the lines of other tracts already surveyed by legal authority, these lines need not be a second time run and marked, but may be returned on the warrant.(1) Nor, in the last case, if it appear that the old lines exist which are returned in the new survey, is it incumbent on the party to show that they were in a survey returned. Their existence, and the return of them in the new survey, are *prima facie* evidence of that.(2)

In another case it is not necessary to mark the lines on the ground. As suppose one or more persons have

(1) Lambourne *v.* Hartswick, 13 Serg. & Rawle 123. M'Rhea *v.* Plummer, 1 Binn. 227; 3 Serg. & Rawle 223; 2 Watts 394.

(2) 13 Serg. & Rawle 113.

warrants for twenty adjoining tracts. The deputy surveyor may run and mark the exterior line of the block embracing all those tracts, and leave the interior lines to be plotted afterwards.(1)

The marking is usually done by notching and blazing trees for corners and boundary lines, or if there is no tree or other natural object, such as a stream or rock, by a post, or stone heap set up for the purpose. It is understood that every year a ring is added to the trunk of a tree by the annual growth of new bark: and to ascertain on a trial of title, at what time a survey was made, blocks are sometimes cut out of the tree at the notch, and these rings examined.(2)

But should it prove, after a lapse of time, that these marks cannot now be found, it does not necessarily follow that they were not made. Trees may have rotted, or been burnt, or cut down: posts and stones removed. If any part appears on the ground, or if there are sufficient lines to show that the surveyor has been there, and the survey has been duly returned, it will be a question of fact for the jury whether the surveyor did not do his duty by marking the lines on the ground, though not now to be found. And when the return has remained a long time in the office undisturbed, without any opposing claim, more particularly if the party has had possession, or has paid the public taxes, and obtained a patent, a violent

(1) 13 Serg. & Rawle 384; 14 Serg. & Rawle 364.
(2) 11 Serg. & Rawle 318.

presumption arises that the survey was regularly made in conformity with the return. After twenty-one years, by analogy to the statute of limitations, it will be considered a presumption of law. Yet if it plainly appears that only one line of the survey was actually run, or if there be several lines, but they are so imperfect as not to designate the shape or contents of the tract, the survey is not valid.(1)

Regularly the survey is made by the surveyor of the proper district in which the land lies, to whom it is directed, or by his successor in office, who may make it on a warrant directed to his predecessor.(2) By the proprietary instructions of 1765, the deputy surveyor was to execute warrants to him directed. But the surveyor-general exercised the power of making special deputations to persons not the regular officers of the districts, and these surveys, if accepted, were good.(3) This power is not taken away, by the act of 1781, from the surveyor-general under the commonwealth: and under the act of 1785 a survey made on a warrant not directed to the deputy of any particular district, is good, if accepted by the surveyor-general, and not interfering with another survey.(4)

(1) 13 Serg. & Rawle 121, 384; 2 Watts 390; 2 Serg. & Rawle 460; 7 Serg. & Rawle 220.

(2) 2 Serg. & Rawle 559. (3) 7 Serg. & Rawle 334.

(4) 3 Serg. & Rawle 325. See 1 Yeates 286; 2 Yeates 147, 219, 245; 2 Watts 292; 2 Sm. Laws 201; 1 Yeates 206; 2 Watts 288.

CHAPTER XVII.

CHANGE OF SURVEY.

Although a survey has been duly made, and the lines run and marked on the ground, yet so long as it is not returned by the surveyor, he has it in his power, if the owner requests it, to go again on the ground and alter the survey, by running and marking it anew, so as to throw out part or embrace new vacant land (not exceeding in the whole the legal quantity), provided it be done in a reasonable time, and no third person's right has intervened. For the vested right of another, accruing between such first and second survey, cannot be affected by a change of a survey once made.(1) But if a survey has been returned, it must stand as returned, the deputy surveyor is functus officio, the authority of his warrant is exhausted. The proper course is for the party interested to apply to the board of property, who may order a new or re-survey, it being however understood that it cannot affect the intervening right of another.(2) These rules do not apply to a survey altered by the deputy after return and patent issued, when the adverse party stood by and encouraged the other to proceed.(3)

(1) 14 Serg. & Rawle 377. 1 Penn. Rep. 3 Penn. Rep. 299.
(2) 2 Watts 397. (3) 10 Serg. & Rawle 23.

Should a deputy surveyor be guilty of any misconduct in the making of a survey, the owner ought to make speedy complaint to the land office. For in the absence of complaint, he will be considered as having waived objection, and if the survey is made and returned, it will be presumed to be done with his consent and approbation, and will be considered his own act.(1) This, however, is on the presumption that he had notice of the misfeasance of the officer. Sometimes there has been fraud in the deputy surveyor, with a view to promote his own benefit or the preference of his friends, by clandestine acts in making and returning surveys.(2) Such fraud is deemed the act of the officer, and is not suffered to injure the other party.(3) Parol evidence is admissible to show this, or to show that laches in the prosecution of his right is imputable to him.(4)

Besides entering the warrant in his book, and going on the ground and measuring and marking the lines, it is the practice of deputy surveyors to keep notes of their work, called field notes, entered in a memorandum book in a journal form, of each day's work, stating the marks and courses and distances and boundaries, and the material events that occur. These he keeps in his possession, and they are sometimes referred to to explain surveys.

(1) 2 Yeates 88. (2) 4 Binn. 161.
(3) 4 Binn. 58, 163. 12 Serg. & Rawle 130.
(4) 1 Yeates 285.

CHAPTER XVIII.

RETURNS OF SURVEY.

Having finished the survey and plotted it, the surveyor ought to return it to the office of the surveyor-general. This is an important part of his duty. Many regulations and laws have from time to time required it, and from its omission frequent disputes have occurred. The deputy surveyor, however, is not obliged to return the survey until his fees and expenses are paid; and if the failure to return is occasioned by the neglect or refusal of the party to defray them, any loss thereby sustained is imputable to him, and not to the officer. The regulations of the proprietaries and the acts of assembly concur in directing the return to be made, on paying for the survey.(1) By the act of 4th September 1793, returns of surveys, made since the 4th July 1776, were made receivable, though the surveyors were out of office when such returns were made—unless they had been more than nine years out of office.

If the party pays or tenders the fees, it is the duty

(1) 2 Sm. Laws 163; 2 Yeates 89; 2 Penn. R. 396; 5 Sm. Laws 11. *Post*, Appendix No. II, III.

of the surveyor to return the survey in a convenient time, and the neglect or fraud of the surveyor will not affect his rights. But it lies on the party to show that the want of a return was not occasioned by any default or neglect of his own; and if there is nothing to show that the surveying fees were paid, the inference is that they were not paid. The deputy being a sworn officer, is, *prima facie*, presumed to have done his duty.

These rules apply in all cases. For when it is said that the title on a descriptive warrant commences from the date, on a vague warrant from the survey, and on a shifted warrant from the acceptance of the return, it is always understood, provided the survey is returned in a reasonable time. The party claiming by any of these is not to lie by whilst another is expending his money, time and labour on the land; nor can the surveyor-general, by accepting a survey out of time, ratify a title otherwise gone by lapse of time and neglect. What is the period of time for the return of survey is not determined. A delay of more than twenty-one years, where an adverse claimant has had possession, would be considered as fatal, if no possession has been taken, or ownership claimed or exercised by the party; for he cannot thus retain the power to return it as land, or change it, or pay the purchase-money due, or not, as he pleases. When there are no facts to be left to the jury to rebut the presumption, the proper time is a question of law.(1)

(1) 15 Serg. & Rawle 224; 2 Penn. R. 397; 1 Penn. Rep. 74, 458.

The return properly made and accepted is of great effect. It is in itself prima facie evidence that the survey has been made as it purports to be, as it is not to be presumed that a sworn officer would return a survey not duly made. It has been held that a party who claims in opposition to it may show that it was not duly made, because it wanted some of the requisites demanded by law, as that it was made without any warrant or order, or before the warrant came to the hands of the officer, or by a deputy not authorized to make it, or not run and marked on the ground, or fraudulently made or returned, or irregularly returned for the wrong person, or, in short, whatever goes to show the survey illegal or injurious. In that case the return vests no title against a third person having the better title.

On the other hand, if the surveyor-general improperly reject a return, the party may have relief by application to the board of property or a court of law.

The accepted return of survey, if there be no complaint in a reasonable time, ordinarily binds the owner to the survey. He cannot afterwards claim land not included in it. He is considered as having relinquished land which he might have embraced in it, but did not, and his boundaries become fixed. But this rule does not apply in cases of fraud by the deputy surveyor. There the owner may, notwithstanding the return, show, by parol evidence, the fraud of the deputy—as that he has returned less land than he ought, or in a wrong place, or any other deception practised

by him. It should however appear that the owner has complained as soon as he had notice of the fraud, and not lain by, and allowed others to be misled into a supposition that they could take up as vacant the land thrown out.(1)

Another effect of the return is, that the deputy cannot alter the survey or execute the warrant anew after it has been made, even although the survey was a chamber survey, and therefore voidable by a subsequent claimant. It is not a nullity. It is so far operative that a new survey can be made only by a new order from the board of property.

A survey duly returned is notice of record; defines and fixes the right of the party and the bounds of the tract; gives a right to a patent, and where that is obtained, gives the legal title and right of entry against the commonwealth and all others (not having a better title from the commonwealth), with the powers of conveying and suing for trespasses from the date of the warrant.(2)

(1) 2 Serg. & Rawle 113; 6 Binn. 59.
(2) 3 Serg. & Rawle 334.

CHAPTER XIX.

TITLE BY IMPROVEMENT AND SETTLEMENT.

This title was commenced by entry on vacant land, without any office right, and indeed without application to the proprietary or his officers. The strong desire felt by the proprietaries to increase the population of the province, as the only method of advancing the value of their lands, and the general wealth and prosperity, induced them to hold out encouragement to persons abroad to emigrate hither, and to connive at titles commenced by the poorer classes, who were without pecuniary means, but were willing to take up their residence, and bestow that labour which is the main source of wealth. Those who were able to buy did so, because an office right was preferable: and the proprietaries used all the means in their power to procure purchasers. Settlement was not authorized; it was even denounced and threatened: but it was at length tolerated, and finally sanctioned.

It was by slow steps that it advanced from feeble beginnings to the character of an acknowledged right, recognized by the board of property, acts of the legislature, and courts of justice. Before it became a

subject of judicial inquiry, the board of property had in later times uniformly sustained *bona fide* settlements. As early as January 1766, the board made decisions in their favour, and in the three following years not less than a hundred cases occurred in which the improvement doctrine was recognised.(1)

The first recovery at law, on a mere improvement right, is stated to have occurred in the year 1760. But it is not until 1774 that we find a full report in our books. The plaintiff claimed under a settlement commenced in 1748, continued from that time, and sold to several persons, and the evidence was objected to. But cases were cited that had been determined in 1768, 1769 and 1772, in support of the plaintiff's claim, and the court said that the encouragement given by the proprietaries and their officers to improvements, had clearly expressed their assent to the usage, and was such a sanction as amounted to an implied contract on their part, to grant the lands to those persons on the usual and common terms. Were the proprietaries to refuse the terms so offered to them by an improver, chancery would decree a performance against them.(2)

(1) 3 Binn. 187. It appears by a statement of Thomas Penn, made about the year 1740, that the lands granted after his arrival in 1732, were near 270,000 acres: but the lands settled in the province for which no grants had at that time been passed were about 400,000 acres. This exhibits the great extent to which the practice of settling without office right had prevailed. Franklin's Hist. Review of Pennsylvania. *Appendix, No. II.*

(2) Campbell *v.* Kid, at Carlisle, 2 Sm. Laws 172.

It would seem, however, that notwithstanding these decisions, difficulties occurred after the revolution. When the first nisi prius court was held within the purchase of 1768, all evidence of improvements was rejected by C. J. M'Kean. They were thus indiscriminately overruled until about the year 1789 or 1790, when Judges Smith and Yeates came to hold courts of nisi prius, and they admitted such evidence. The whole doctrine of improvement right was then re-established, the chief justice and other judges concurring.(1) As early as 1786 the legislature preserved the claims of settlers and defined the meaning of a settlement.(2) The act of 1792 embraced them in its provisions,(3) and by the act of 5th September 1794 no title could be obtained without a settlement.(4)

On the establishment of the general doctrine, a number of questions necessarily arose in relation to this kind of right. 1. On what lands such titles might originate. 2. What acts constituted it. 3. What quantity of land it authorized, and how ascertained. 4. The necessity of an official survey or authority. 5. What time it commenced and bore interest. 6. What amounted to an abandonment.

1. On what lands the title by improvement might originate.

The land must have been vacant; free from any

(1) 1 Binn. 392. 3 Binn. 188. 4. Binn. 323. 2 Dall. 98.
(2) Ante 90. (3) Ante 92, 94. (4) Ante 97.

prior title by warrant, or location, or prior settlement. An entry in such case would be a trespass on the former owner, not sanctioned by any law or usage; the doctrine being well established, that no actual settlement, made after an adverse survey, can confer a title, or be received in evidence to affect the right.(1)

By this is not meant the case of an abandonment by a former grantee or settler, by which he has forfeited his right; nor when he has lost it by laches or neglect in pursuing his claim. For in such case, the land may be considered as again thrown back into the mass of vacant territory, and liable to all its incidents.

Lands out of the limits of the purchases from the Indians could not be acquired by settlement, except when, under peculiar circumstances, a pre-emption right was considered as belonging to the settler, by reason of promises made to him under the authority of the proprietary or his officers.

2. What acts are necessary to constitute an improvement or settlement.

After the revolution, these acts were defined by the legislature, by the law of 1786;(2) and they seem to have been essentially the same under the proprieta-

(1) 2 Sm. Laws 180. 11 Serg. & Rawle 264.
(2) 3 Binn. 188. 4 Binn. 222. Ante 90.

ries: though, at one time, notions somewhat vague existed as to the meaning of an improvement.(1)

1st. The person must have gone on the land with intent to make immediate settlement, and have personally resided there. He could not acquire this title by acts done by him on the land whilst he resided elsewhere. The policy under which this species of title was supported, was to encourage the poorer classes, who were not able to pay for land, and were yet willing to make a tract their home, and bestow the labour of themselves and families. The increased value of the soil thus produced would furnish a security for the principal and interest of the purchase-money. It would have frustrated this policy to allow one to hold land as a settler, who resided elsewhere, and would enable him to monopolize many parcels of territory, without conferring the benefits of his personal industry.(2) This did not, however, preclude a person from acquiring such title by placing a tenant on the land, who resided there in lieu of the owner. So a man's children, if of sufficient age to reside on and cultivate the soil, might be actual settlers.(3) And though the general rule is, that the work of a minor son is for the father's use, yet if the father permits him to settle a tract for himself, it enures to the use of the son.(4)

(1) 3 Binn. 188. 4 Binn. 222.
(2) 2 Sm. Laws 180, 210, 73.
(3) 2 Sm. Laws 237, 246.
(4) 4 Serg. & Rawle 211. 4 Yeates 534.

2d. The actual residence must have been continued, unless it has failed after its commencement from causes sufficient to excuse it: such as expulsion by a public enemy, or well founded danger of their attack, or force used by an adverse claimant. In these cases if the party has persevered in his claim, and done all that was reasonably in his power to effect a residence whenever opportunity should offer, showing a clear and manifest intent to make it a place of residence and means of maintaining a family, his title remains.(1) So there may be a temporary absence by going into the service of his country during war, or from duty to his family; yet if there is the *animus revertendi*, the right is not lost by it. On the other hand, occasional acts done on the ground, such as deadening timber, sowing a little grain, &c., where the absence during intervals is not accounted for, do not confer this title.(2) And where a claim by settlement comes in collision with an office right, it must clearly have subsisted as such before the commencement of the latter. If, for instance, a party two days before the date of another's warrant had begun to cut logs on the ground, it would not avail him as a settler.(3) A different rule would render an office title insecure.

A mere occupancy or exercise of ownership on lands, without the residence required, vests no right whatever: on the contrary, the occupier is a trespasser

(1) 2 Sm. Laws 237.
(2) Ibid. 236, 237. See Bixler *v.* Baker, 4 Binn. 213.
(3) 2 Sm. Laws 208.

on the lands of the commonwealth, and may be turned out of possession by one acquiring an office right, and that although such trespasser has been more than twenty-one years in possession. For the statute of limitations does not run against the commonwealth.(1) This sometimes happens when the owner and occupier of a tract adjoining vacant land clears over his lines into it, or cuts down timber on it, or uses it as his own for other purposes.

The act of 3d April 1792 prescribed the duration of the settlement, the extent of the improvement, and the period within which it should be made, but did not define its nature. For this we must look to the act of 1786.(2)

The act of 5th September 1794 made settlement and residence a preliminary condition to the grant of any lands whatever by the commonwealth, and required in addition, that grain should be raised. This act continued in force till it was repealed partly on the 28th March 1814, and the residue on the 10th March 1817.(3) The reasons for its enactment are variously stated.(4) The fact that the requisites were complied with, was required to be proved where an adverse title of subsequent date came in collision with it; the issuing the warrant being only prima facie evidence of it: but relief on this score was given by an act passed on the 7th February 1812.(5)

(1) 3 Penn. Rep. 428.
(2) 4 Serg. & Rawle 501.
(3) Ante 97.
(4) Bixler *v.* Baker, 4 Binn. 213.
(5) 2 Penn. Rep. 171.

3. What quantity of land it authorized, and how ascertained.

To what extent of unimproved circumjacent land a settler is to be considered as acquiring an equitable title, was one question in the case of Campbell *v.* Kid, when this kind of right first became, so far as we have a reported case, the subject of judicial investigation. The court said, it was certain that a right to improve lands would not carry an indefinite claim to adjacent unimproved lands, but seemed uncertain, at first, whether the quantity should be ascertained by a jury, or whether such amount of wood land should be determined by the proprietary officers, and be solely judged of by them. The settler had a verdict, and the court ordered that his counsel should have leave to move the court at the day in bank to give evidence (if they thought it regular and proper) of the practice of the country and the land office, with respect to the quantum or proportion of adjacent unimproved lands, properly claimable or grantable under an improvement right. It was afterwards agreed, that the settler had a right to three hundred acres and allowance, under the proprietaries, if he chose to take it: that being the amount to which any one person was limited in an office right. He might, however, limit himself to less if he chose.(1) And if he has had a survey made by the deputy surveyor (as he ought to do), or has taken out a warrant, or marked his boundaries, even unofficially, or made consentable lines with a

(1) 2 Sm. Laws 172. Ante 137.

neighbour, or his tract lies within lines surveyed around him, and adopted by him, he is bound by such acts. If a settler has made no indication of the extent of his claim, it would be prudent for another who was about to take up land near him to request him to survey his lines. Without this, a warrantee proceeding to make his survey, does it at his peril; for, in case of dispute, a jury only can decide on the reasonable extent of a settler's tract, regard being had to shape, soil, water and other circumstances. If, on such request, the settler refuses to mark his boundaries, his conduct would be so unreasonable that every presumption would be made against him.(1)

Under the commonwealth the settler was entitled to four hundred acres.(2)

If the settler should undertake to claim by boundaries land amounting to six hundred acres (though supposed to include only four hundred), that will not prevent any other person from settling within those bounds.(3)

If one make a settlement, intending to take up the whole of a vacancy, surrounded by legal surveys (not exceeding what the law allows), the possession extends over the whole, in point of law, though the actual enclosure or occupation may be of a part.(4)

(1) Davis *v.* Keefer, 4 Binn. 161. Blair *v.* M'Kee, 6 Serg. & Rawle 204. 12 Serg. & Rawle 153. 5 Binn. 136; and see M'Call *v.* Neely, 3 Watts, 70. (2) Ibid. Ante 90.

(3) Kissinger *v.* Thompson, 12 Serg. & Rawle 45. 5 Watts 13.

(4) Gilday *v.* Watson 2 Serg. & Rawle 410. See 3 Watts 70.

4. The necessity of an official survey or authority.

To recover in ejectment, it is necessary that the settler's claim should be definite, and the boundaries of it designated. At first it seems to have been held, that a survey was indispensable. But it was intimated there might be cases where the refusal or default of the deputy surveyor would excuse it, if complaint were duly made to the land office.(1) A person in possession might defend himself by showing a designation of boundaries between himself and a neighbour, by consent, or what is called consentable lines.(2) At length, in Luck *v.* Duff,(3) TILGHMAN, C. J., says, the object of the title by settlement was to increase the population of the country, as well as to promote the interest of the late proprietaries, and of the commonwealth who succeeded to their rights, in a financial point of view, by sales of land upon credit, to persons who, though unable to make immediate payment, could give good security (by clearing and improving the land on which they settled) for future payment of the purchase-money, with interest. An official survey could not be made without a warrant, which is not to be obtained without payment of the purchase-money; so that if a trespasser, without pretence of title, can get possession of land held by his neighbour by settlement, the settler is either to make immediate payment of the purchase-money or lose his

(1) 2 Sm. Laws 206. (2) Ibid. 174, 175, 179, 237.
(3) 6 Serg. & Rawle 190. 10 Serg. & Rawle 293.

land. He therefore seems to think, 1. That the land on which a man has built his house, and also that which has been cultivated and enclosed by him, may be ascertained with absolute certainty. 2. That his right may be reduced to certainty by the boundaries of adjoining surveys. 3. By the settler's defining his limits by an unofficial survey marked on the ground, and known to the neighbourhood.

But for lands west of the Allegheny river, &c., a survey is necessary to maintain ejectment; because there, by the act of 3d April 1792, a settler may demand of the deputy surveyor a survey, without payment of any part of the purchase-money.(1)

5. What time the title by settlement commenced and interest.

The settler having the enjoyment of the land and its products, ought in justice to pay interest on the purchase-money for the time of such enjoyment, both from the rules of natural equity, and also that he might not possess an advantage over those who took out an official title and paid the purchase-money, or were liable for interest. The rule, therefore, has always been, when the settler applied at the land office for a warrant, to charge interest on the purchase-money from the time of the commencement of his settlement. And in order to insure, so far as possible,

(1) 6 Serg. & Rawle 190. 10 Serg. & Rawle 293.

correctness in the statement of this time, two measures were adopted. 1. In the year 1765 and afterwards, he was required to produce a certificate of the time of such commencement, from two justices of the peace or others. 2. The courts have uniformly held the party bound by the time of the commencement of interest stated in his warrant, and refused to allow evidence to be given, or pretension set up, of a settlement previous to that time; thus throwing in their powerful aid to induce the party to be honest, by making it his interest to be so. Many strong cases have occurred where the attempt was made to vary the date, and set up a claim by settlement made prior to the time stated in the warrant, in order to defeat an intervening claim, but it has always been repelled. It is considered a fraud on the commonwealth, and an abandonment of claim for the intermediate time.(1) On the same ground evidence is not admissible of a transfer of an improvement right before the time of commencement of interest stated in the warrant. But a bare intention, not executed, thus to defraud the state, will not affect the settler's claim. And he may show a commencement of settlement after the date, for the commonwealth is thereby a gainer.(2)

6. What constituted an abandonment of this right.

As the residence of the settler must be continued,

(1) 2 Sm. Laws 178. 3 Yeates 59. 4 Yeates 429.

(2) 4 Serg. & Rawle 434. 5 Serg. & Rawle 188. 10 Serg. & Rawle 214.

an improvement must not have the smallest cast of abandonment.(1) The right, after it has commenced, may pass to others by transfer, descent, or other modes of alienation of real estate: but the residence by him or those who claim under him, must be uninterrupted. If a settlement be commenced and carried on, and then abandoned, a stranger cannot enter and avail himself of it by continuing the settlement without a title under the original improver.

As to what constitutes an abandonment, if after being duly commenced it has been voluntarily relinquished, all right under it against a subsequent claimant is gone.(2) If the party has left the land and not returned, and it is thus abandoned, it becomes vacant, and another may appropriate it, unless the absence is accounted for by some excusable cause,(3) in which case he must return as soon as he can.(4) Whether there have been such laches and want of diligence as amount to an abandonment, is usually a question of fact, in which a variety of circumstances must be taken into consideration.(5) Where it is a question of time, depending merely on the number of years that have elapsed, it is a question of law for the court, and if ten years had elapsed, that constitutes an abandonment.(6) In a former case even seven years has been suggested as sufficient.(7)

(1) 2 Sm. Laws 176. 2 Yeates 476. (2) Ibid.

(3) 2 Sm. Laws 235, 237. (4) 3 Penn. Rep. 328.

(5) 10 Serg. & Rawle 214. 3 Penn. Rep. 434.

(6) 2 Watts 409. 2 Penn. Rep. 328. 1 Watts 46. Query, if not a mixed question of law and fact in both these cases?

(7) 1 Watts 46.

If the improver take out a warrant or application, including his improvement, and procure a survey thereon, he is concluded by such survey, and cannot hold contiguous lands under the improvement right.(1) Where such survey is not returned, it would not be conclusive evidence, and he may show that he forbade the return of such survey, and several years after, and before any adverse claim, he re-located the first.(2)

(1) 2 Sm. Laws 280. (2) 4 Serg. & Rawle 442.

CHAPTER XX.

NATURE OF PROPERTY HELD BY WARRANT, ETC.

UNDER every mode of obtaining vacant lands from the proprietaries by warrant, application and survey, settlement or otherwise, and from the commonwealth since, the legal title, as between them and the grantee, or settler, remained in the proprietaries or commonwealth until a patent issued. Before that time the warrantee, or applicant, or settler had only an inchoate, or inceptive title, which came in process of time to be deemed an equitable title, which courts would enforce. Now it is considered a legal title against all but the commonwealth.(1)

In more ancient times these claims to land were ranked as chattels, and sold as such by parol and delivery. They passed by will in absolute property, without words of inheritance. They were transferred by executors, and sold by administrators without an order of the orphan's court. Ejectment could not be supported on them.(2)

(1) 2 Sm. Laws 170. 1 Serg. and Rawle 210. 11 Serg. & Rawle 264. 3 Dall. 170.

(2) 1 Yeates 220, 500. 2 Sm. Laws 171. 3 Binn. 187.

In later times, from about the year 1758, they have been treated as titles to real estate, on which ejectment might be sustained, and of which conveyances are within the recording acts. They are subject to all the rules of descent, devise and transfer which govern the ordinary titles to real estate; capable of being entailed; liable as real estate to dower, curtesy, lien and execution.(1)

Where two or more take out a warrant for a tract, they are tenants in common. But if two or more warrants to different persons are surveyed together, and a general diagram of surveys be returned, without a division line, or any thing to designate the tracts, they are not tenants in common of the whole. Their rights, as between themselves, are suspended until the grant to each is specified by the proper officer or their own agreement, and then the title of each relates to the commencement.(2)

(1) 2 Serg. & Rawle, 56. 5 Binn. 120. 1 Serg. & Rawle 210. 5 Binn. 154. 4 Binn. 140. 1 Yeates 218.

(2) 5 Binn. 119. 14 Serg. & Rawle 364.

CHAPTER XXI.

WHAT LANDS MAY BE TAKEN UP AS VACANT.

A WARRANT or order of survey authorized only the survey of vacant lands, for they alone belonged to the proprietary or commonwealth to grant. But whether the lands applied for were vacant or not, the land officers did not undertake to examine, and in most instances did not possess the means of ascertaining. Of that the applicant must judge for himself. If he knew they were appropriated by prior right, it was against conscience to take out a warrant for them, or to have them surveyed as vacant. But he might assert the invalidity of a former grant and insist on a survey. In that case the deputy surveyor ought, if it be known to him, to note it in his books and return of survey.(1)

To prevent a fraud often practised, of taking out a new warrant for land held under a former warrant, in order to gain a benefit by the reduction of the price of lands, the act of 13th April 1807 requires, in respect to lands within the purchases of 1768 and prior, an oath or affirmation by the person applying, that no

(1) 4 Watts 150.

warrant or other office right had issued for the land, in the name of the deponent, or any person under whom he claims. And to secure interest for the time of previous occupation, the act of 1st April 1784 requires a certificate from two justices (for land within the purchase of 1768 or previous); and the act of 10th March 1817 requires proof by a disinterested witness, on oath or affirmation before two justices of the peace, whether the lands are improved or unimproved, and if improved, the date when the improvement commenced, before a warrant shall issue for lands east of the Allegheny river and Conewango creek, and within the purchase of 1784.

Certain descriptions of land were excluded from the surveys of warrantees. In the times of the proprietaries, the deputy surveyors were prohibited from surveying land within the proprietary manors or tenths. And the warrant forbade it by the clause that they were not to survey lands already appropriated. Lands not purchased from the Indians were uniformly excluded from survey or settlement. Lands vested in the commonwealth by attainder, forfeiture or escheat, could not be taken up by ordinary warrant and survey,(1) nor islands in navigable streams, nor, in modern times, land in or adjoining the city of Philadelphia.(2)

(1) 6 Binn. 68. 2 Yeates 127, 129. 1 Yeates 287. 4 Watts 149.
(2) 1 Whart. 536.

Occupation or possession of vacant lands, not under an office right, nor by settlement and residence, gives no title whatever against the commonwealth: the exercise of ownership in such case does not raise the presumption of a grant, nor does any statute of limitations run against the commonwealth.(1)

(1) 3 Penn. Rep. 428. See the act of 1729, 1730, ante 43.

CHAPTER XXII.

PATENTS.

The patent is a deed from the commonwealth, under its great seal, conveying to the grantee all its right in the land, describing it by metes and bounds, and passes, as respects the commonwealth, the complete legal title, all the preparatory measures of warrant, application, survey and acceptance being merged in the patent. As to third persons, it is *prima facie* evidence, that all the previous requisites had been complied with. Before it issues, the purchase-money due must always be paid: and the land is thenceforth discharged from the lien which till then existed. Generally, the grantee is concluded by the lines and boundaries described in the patent, though perhaps in a special case there might be an exception.(1)

Third persons claiming by warrant, application, settlement or otherwise, may show that the patent was wrongfully issued to the patentee; or rather that he is trustee for him who has the right: the material

(1) 2 Sm. Laws 255. 2 Yeates 211. 5 Binn. 77. 1 Pet. C. C. R. 291. 2 Binn. 12.

consideration being, not who has the patent, but to whom it ought to have been granted. For the land officers, in issuing the patent, act merely in a ministerial capacity, and cannot change the rules of law or rights of parties. And even though he who has the patent sell to a *bona fide* purchaser without notice, the vendee is in no better situation. His claim under the patent may be contested by one having a better right by settlement, warrant or location. These titles are not equities within the ordinary rule of being unavailing against a purchaser of the legal title. A patent founded on a fraudulent survey, or obtained by misrepresentation and deceit, is void against third persons affected by it.(1)

The patent, however, has always been received in evidence in the first instance, to show that the legal title was out of the commonwealth. The question whether it is good is a subsequent one.(2)

A warrant, survey and patent duly obtained, refer back to the original application entered in the land office.(3)

(1) 6 Serg. & Rawle 118, 125, 204, 137, 140. 4 Binn. 213.
(2) 4 Binn. 213. 10 Serg. & Rawle 246. 14 Serg. & Rawle 344.
(3) 1 Yeates 523.

CHAPTER XXIII.

PRICES OF LANDS.

In 1681, the prices in England to first purchasers were forty shillings for one hundred acres, and a quit-rent of one shilling per hundred acres.

William Penn and his commissioners of property, until the year 1713, commonly granted lands at the rate of *five* pounds, and a bushel of wheat (or more frequently one shilling sterling) quit-rent, for one hundred acres.

In 1713 the price was raised to *seven* pounds, *ten* pounds and *fifteen* pounds, with the same quit-rent. From 1712 to 1715, lands at Oley (now Berks county) and Conestoga (now Lancaster county), were granted at ten pounds per hundred acres. The quit-rents varied: being, in some cases, one shilling sterling per hundred acres; in others, a half-penny and a penny per acre.

In the warrants issued after the decease of William Penn (1718), and under the authority of the trustees of the province, they were most commonly ten pounds, and one shilling quit-rent, for one hundred acres.

In 1730, lands at Oley were charged at fifteen pounds per hundred acres, and in some scattered cases on the record the price was higher.

In 1735 the price was *fifteen* pounds *ten* shillings per hundred acres, and a half-penny sterling quit-rent per acre. The price fixed by the lottery was *fifteen* pounds *ten* shillings, current money, for one hundred acres (which was termed the settled price), and a quit-rent of one shilling sterling, "as was agreed to be paid by the first purchasers and settlers." About this time Thomas Penn introduced into some warrants a sort of fine for alienation, of which we read in the English tenures, by a clause, "that the grantee should pay a year's rent at every alienation." This was not done when the price was *fifteen* pounds *ten* shillings, and a half-penny sterling quit-rent. This last, with the exception of a few months, continued the ordinary price until 1765, when it was fixed at five pounds sterling per hundred acres, and the quit-rent one penny sterling per acre. This, at the rate of exchange, was considered equal to £15. 10*s*. and a half-penny per acre, and it was not intended to make any difference in the price of the land, but only in the mode of paying. The abolition of quit-rents at the revolution operated, therefore, exceedingly to the advantage of the purchasers under the regulations of 1765.(1)

In 1784 and 1785 the commonwealth fixed the

(1) 5 Sm. Laws 14.

price for land in the former purchases at *ten* pounds per hundred acres. This has been considered as embracing all lands for which no office right had been granted.(1) For lands in the purchase of 1784, *thirty* pounds per hundred acres was the price established.

In 1792 the price of lands within the purchase of 1768, and preceding purchases, was reduced to *fifty shillings* per hundred acres, and in the purchase of 1784, east of the Allegheny river and Conewango creek, to *five* pounds per hundred acres. North and west thereof, it was fixed at *seven* pounds *ten* shillings.

In 1814 the price of lands in the purchase of 1768, and previous, was raised to *ten* pounds per hundred acres.

In 1817, the same price was placed on lands lying east of the Allegheny river and Conewango creek, and within the purchase of 1784.(2)

(1) 5 Sm. Laws 25.
(2) See Appendix, *Prices of Land.*

CHAPTER XXIV.

PURCHASE-MONEY.

When lands were taken up by warrant, the purchase-money was usually paid; but in many cases the warrant issued without payment. On applications or locations, in 1765 and after, no purchase-money was required. At this time and long previous, settlements moreover commenced, and were held, without payment of purchase-money. In all these cases the owner was bound to pay before he could obtain a patent; but in numerous instances he had possession without adverse claim, and had little inducement to call at the office and pay his money and take out a patent. It is stated that, about the year 1740, two hundred and sixty thousand acres of the granted lands remained unpaid for: and of the lands held by settlements, without grants, about four hundred thousand acres were unpaid for.(1) The sums then due on the whole of these, without interest, are stated at £104,850, Pennsylvania currency.(2) The proprietaries, and the commonwealth after them, anx-

(1) Statement by Thomas Penn. Franklin's Hist. Review. *Appendix, No. II.*

(2) Ibid.

ious to realize the consideration money of the lands they had parted with, used repeated and various efforts to collect it; but, though much of it was from time to time paid in, a large amount remained uncollected, and a considerable debt to the commonwealth is still due from the lands.

The nature of this debt for the purchase-money is a claim against the lands themselves. It is a lien on them for the amount, with interest, in whose hands soever they may come. The act of 3d April 1792 makes it so, expressly, on lands taken up by settlement under that act: and it is a lien universally as to lands within every purchase. It has been considered, however, as creating no personal responsibility to the commonwealth from the present owner, and as doubtful whether even the first grantee was personally liable. There is no instance of an action by the proprietary or the commonwealth for the purchase-money, but laws have from time to time been passed since the revolution to collect it, by proceedings against the lands.(1) By the act of 9th April 1781 (the first act of assembly on the subject of lands), all arrears of purchase-money were to be paid in four equal annual instalments; and in case of default of payment of any instalment for six months, the county commissioners were authorised to have the land sold by the sheriff, or so much of it as was requisite. By the act of 16th

(1) 2 Sm. Laws 151. 9 Serg. & Rawle 72. 13 Serg. & Rawle 207.

September 1785, the owners of unpatented lands were permitted to give bond and security, and, in case of neglect, sale was to take place. A new mode of proceeding was adopted by the act of 22d March 1820. A suit was to be instituted, in nature of a *scire facias* on a mortgage, and prosecuted to judgment and recovery. These and other laws were partially successful, and considerable sums were received by the treasury, but they did not go into full effect, in consequence of temporary acts postponing their operation.

The last act was that of 10th April 1835, limited to three years. It goes on the principle of graduating the present value of the lands, by appraisement, and abating a proportion of the interest on the purchase-money, according to such appraised value. This act seems likely to be more successful in extinguishing the debt due for unpatented lands than any prior one.

The non-payment of the purchase-money to the proprietary or commonwealth being a matter between the purchaser and the owner of the soil, no third person could take advantage of it as a forfeiture of right. The omission to pay after survey returned, is no evidence of abandonment of the title to the land; for although the terms published in 1769 made all locations void, where the purchase-money was not paid in twelve months, yet these terms were so uniformly relaxed, that in case of a survey returned before the land was acquired by another, and payment of the purchase-money and interest, at any time, the courts of

law would have prevented the proprietaries from insisting on the forfeiture.(1)

As between the owner and his vendee, the latter may defalk the purchase-money due to the commonwealth, where he has subsequently paid it, from the consideration money due by him to the vendor, in case the vendor gave a general warranty, or entered into articles to make a good and lawful conveyance; but not from the widow's share in lieu of dower, after recognizance given for a certain sum to be paid to her.(2)

To secure interest on the purchase-money, where the land applied for had been previously occupied and improved, the act of 1st April 1784, sect. 3, required a particular description of the land applied for, with a certificate from two justices of the peace of the proper county, specifying whether the lands were improved or not, and, if improved, how long such improvement had been made. This provision extended to the purchases of 1768 and previous. The act of 10th March 1817, made a provision nearly the same (the only difference being in requiring an affidavit on oath or affirmation before two justices, instead of a certificate) as to lands in the purchase of 1784 east of the Allegheny river and Conewango creek.(3)

(1) 5 Binn. 142.
(2) 1 Penn. Rep. 417. 2 Rawle 72. 2 Watts 200.
(3) Ante 153.

CHAPTER XXV.

LACHES IN PURSUIT OF CLAIM.

As a warrant or order of survey contained no transfer of the land, but was merely an authority to the proper officers to have it surveyed and distinguished from the common mass of vacant lands, with a right to a conveyance of the legal title by patent, on the performance of the conditions stipulated, it bore no resemblance to a common law conveyance, nor could much light be derived from the learning relating to the latter in the books. It was in the nature of an executory agreement, which is peculiarly the subject of a chancellor's jurisdiction, and is regulated by principles of justice and equity. Hence, in the discussions of our courts on the subject, chancery principles, drawn from the decisions of courts of equity, have been appealed to as grounds of determination where positive law and established usages of the offices were silent. Relief has been granted, so far as the jurisdiction of our courts permitted, against frauds and accidents, and parties have been declared trustees where the circumstances of the case would, on equity principles, justify it. In conflicts with adverse claimants, under the proprietary and the com-

monwealth, much was always considered to depend on vigilance in following up a right, or laches in long neglect of it, by which others were induced to expend money in acquiring title to the land, or in improving it. By promptness and care a title might be secured —by laches or gross neglect, and a superior equity thence arising in third persons, it might be totally lost.(1)

Sometimes this neglect by a party has been termed an abandonment: which, perhaps, in the sense of a voluntary relinquishment, rarely occurred, especially where money had been paid: though on applications, where nothing was required to be paid in the first instance but the fees of office (seven shillings and sixpence), the party might really abandon, on discovering that the land had been taken by another, or for other reasons.(2) This doctrine of abandonment has been said never to apply where the party having a warrant or location procured a regular survey, designating the land by metes and bounds: for in such case it must be considered as definitively appropriated.(3) This is to be understood with the qualification, that the survey is duly returned, or ownership exercised, by taking possession, paying taxes or otherwise. Possession goes a great way, and if taken and continued, may confirm a title otherwise imperfect.(4)

(1) 4 Serg. & Rawle 471. 12 Serg. & Rawle 129. 2 Binn. 58, 163.
(2) 2 Sm. Laws 152, 169, 187. 2 Serg. & Rawle 398.
(3) 2 Sm. Laws 169.
(4) 1 Yeates 287, 509, 521. 2 Yeates 81, 88.

A warrant, for instance, dated in 1763, and totally abandoned until 1812, might give no right; yet it might give a perfect right, if followed up in a reasonable time by a survey which had been destroyed without the fault of the warrantee: or it might give a right even without a survey, if it described the land with reasonable certainty, and the warrantee took possession, designating boundaries, so as to be known, and retained a continued possession till survey in 1812. A notorious and well established possession under a location descriptive of the land, is an appropriation sufficient to support ejectment.(1) On the other hand, even though the warrant be descriptive, yet if twenty years are suffered to elapse without having a survey returned, or taking possession, or examining acts of ownership, and, in the mean time, a title vests in another under the commonwealth, the claim may be lost.(2)

The laches alluded to may be considered as evidenced by the failure of the party to comply with certain requisites, which constitute the ingredients of this kind of title, and the following are some of the most important items to be shown:

1. The payment of the purchase-money at the time required by law or usage.

(1) 4 Serg. & Rawle 470.

(2) 3 Binn. 103. 1 Penn. Rep. 74. 2 Serg. & Rawle 398. 1 Yeates 289, 218, 521.

2. The description of the land granted with reasonable certainty, so as to furnish notice to others of its disposal, and to operate in analogy to a conveyance by deed describing the land conveyed.

3. The filing the warrant with the deputy surveyor, and procuring a survey in a reasonable time measured and marked on the ground, enabling others thereby, and by the entry on the books of the deputy surveyor, to ascertain on the spot, or neighbourhood, by due examination, any prior appropriation of the same land.

4. The return of survey to the office of the surveyor-general, on payment or tender of the fees within proper time, which gives further notice in the office of the surveyor-general.

5. The acceptance of this return by the surveyor-general, evinced by its being placed among the regular files of accepted surveys in his office: or, if improperly refused, the application for relief to the board of property or a court.

6. Taking possession, or exercising acts of ownership by paying taxes, or otherwise, under a descriptive warrant, or location, or survey.

7. Early complaint and prosecution before the board of property, or at law, on notice of an adverse claim, or when any fraud, neglect or misbehaviour of the deputy surveyor becomes known to the party.

CHAPTER XXVI.

LAND OFFICE AND BOARD OF PROPERTY.

From the earliest times, the grants of land by the proprietaries were managed by certain agents appointed by them, consisting of commissioners of property, or the governor of the province for the time being, or president of the proprietary council, and heads of departments, organized for the purpose of issuing grants, receiving purchase-money, causing surveys to be made, and appointing and superintending the deputies employed in that duty, settling accounts and transacting other business appertaining to the sales of lands. These officers, considered together as a whole, were termed the *land office.*

The first act of assembly relative to the lands of the commonwealth after the revolution (the act of 9th April 1781) constituted a land office, resembling the proprietary model, consisting of three persons—the secretary of the land office, the receiver-general and the surveyor-general, and directed the records and papers of the former land office and board of property to be removed to it. These are of great importance, as they contain the origin of all titles to land. They

were considered as records by the legislature in passing the above act. By the act of 27th March 1809, the office of receiver-general was abolished.(1)

The land office, merely as such, possesses no judicial power: the officers are barely agents. Their acts, where they exceed their authority, are void, like the acts of other agents. Even if the title of a party be consummated by a patent, every one interested in the land thus acquired may contest the validity of the grant. Their powers are to grant lands in the name of the commonwealth, as public agents, but under the conditions provided by law, of which every man is bound to take notice. They have no authority to dispense with the provisions of a positive law; and whether they err from ignorance, inadvertence or misinformation, their acts cannot conclude.(2) Thus, if an act of assembly direct the secretary of the land office to issue patents to certain persons or their representatives, this is a ministerial act, not a judicial duty; and a mandamus lies from the supreme court in case of refusal to issue them to the persons clearly shown to be entitled.

The proceedings in the land office in which a survey is granted, even though *ex parte*, are evidence, but not binding in a court of law. If *ex parte*, they deserve but little respect.(3)

(1) 1 Serg. & Rawle 534. 3 Serg. & Rawle 209.
(2) 10 Serg. & Rawle 247. 4 Binn. 213.
(3) 6 Serg. & Rawle 109.

The *Board of Property* under the proprietaries was not constituted by act of assembly. It seems to have grown up from the nature of the affairs connected with the landed interests of the proprietary. The usual routine of business was conducted by each officer in his own department: but occasionally a case of difficulty would arise, in which the consultation and advice of all were useful. Certain usages and regulations formed the law as to the disposition to be made, and it was desirable to preserve uniformity and consistency: but if the proprietaries chose, they might, as regarded their own rights, dispense with them. Any controversy between the proprietary and the grantee, as to the rights or obligations of either, could be generally thus adjusted. Burthened, as the proprietary always was, with immense tracts of vacant lands, no attempts appear to have been made to recover back again, by legal proceedings, lands held by imperfect titles, though the money due on them was not paid, nor were suits ever brought for the money. It was called for by proclamation and advertisement, but if not paid, the proprietaries chose to wait and let it remain a lien on the land, until circumstances should occur (as they would from time to time), which rendered it desirable to parties to complete their title: as when they wished a patent for their own satisfaction, or to confirm their title, or to facilitate a sale. If the party came forward to pay the purchase-money and take out a patent, difficulty seldom occurred with the proprietary. Even a large surplus was allowed, if paid for: and settlements, without office right, by degrees were approved and confirmed.

But no long period of time could elapse before litigations would arise between different claimants, under inchoate rights, for the same tract of land; and in the first instance the contest would appear before the land officers, because they represented the right of the proprietary to grant to either party, or withhold any further assistance to the completion of his title. Hence a *caveat* or caution was given to them by one party, to withhold their sanction to the title of his opponent; and whether they would or not, was a question for their own decision, which they had no inducement to decide otherwise than according to justice and equity, and to the settled course of proceedings in similar cases. To examine the case, they met together in the board of property; the parties were notified and heard in support of their claims, and a conclusion was come to, as to what ought to be done by the officer whose duty it was to act in relation to it. So far as they parted with any right of the proprietary, their decision would be conclusive. So far as it affected the rights of others, it was not so. The courts were open to correct the decision if it should prove to be unjust. It is presumable that the courts looked to the usage and practice of the land officers, as affecting the claims of parties, and treated a decision by persons in office, conversant with the matters in controversy, with respect.

These great features re-appear in the enactments of the legislature immediately after the revolution, when the commonwealth succeeded to the proprietary interests. The legislature vested in the board of property

the powers formerly exercised, and clothed them with others necessary to facilitate their administration of justice—such as issuing citations and examining witnesses on oath, but did not give to their decisions in general any binding effect.

The act of 5th April 1782 constituted the board of property. The officers composing it have been changed at different times, and now consist of the secretary of the land office, the surveyor-general and the secretary of the commonwealth, who sit once a month at the seat of government, and proceed by citations and summary hearings, and decide facts without a jury. It is a court legally constituted for the trial of *caveats*, which are in the nature of equitable actions. It is not a court of record, in the strict sense of the word, but its books and papers are so far records, that, by the act of 9th April 1781, certified copies are evidence.(1)

Its jurisdiction was mainly traced out by the act of 5th April 1782.(2) This act recites, that many delays had been occasioned by doubts on the subject, and declares that certain executive officers should be a board of property, and gives them power:

1. To hear and determine on all cases of controversy on *caveats*:

(1) 3 Serg. & Rawle 379. 4 Serg. & Rawle 474.
(2) 1 Sm. Laws 529.

2. In all matters of difficulty or irregularity touching escheats and warrants on escheats. [This branch may be considered as in a considerable degree superseded by the mode of proceeding on escheats prescribed in subsequent acts.]:

3. Warrants to agree, [meaning, it is presumed, warrants issued in pursuance of amicable adjustments of conflicting titles, by agreements of the respective parties]:

4. Rights of pre-emption:

5. Promises:

6. Imperfect titles, or otherwise:

which heretofore had, or thereafter might arise, in transacting the business of the land office.

The secretary of the land office is empowered and directed to receive *caveats*, of which copies were to be transmitted to the surveyor-general's office. By the act of 8th January 1791,(1) the secretary of the land office is authorized to appoint days of hearing and grant citations. By the act of 6th February 1804,(2) the board or any member may administer oaths or affirmations to witnesses. The act of 22d January 1802(3) provides a limitation to the effect of

(1) 3 Sm. Laws 2.
(2) 4 Sm. Laws 112.
(3) 3 Sm. Laws 480.

a caveat, by enacting that no caveat, note on survey, or writing in nature of a caveat, thereafter to be entered, should bar the issuing of a patent during a longer period than two years, unless a citation were issued and prosecuted.

In relation to the effect of a decision by this board, the act of 1782 provides, that no determination by it should, in any measure whatever, prevent either of the parties from bringing their action at common law, either for the recovery of possession, or determining damages for waste or trespass, but the courts of law should remain open to the parties in as full and ample manner as if no determination had been given.

Nothing, therefore, can be done by the board of property that will affect the right of any person, or alter the nature of his title as it otherwise existed. For it has been repeatedly decided that their decision in fact or law binds no right whatever, but the party's remedy remains unaffected by their proceedings. A statement of any facts in the body of their decree has, by uniform practice, been suffered to be read in trials at law, as evidence to show what passed immediately before it, but not as evidence of those facts to affect the right of the party. As to the law, they cannot by their determination alter the rules of law. For instance, they cannot give validity to an alleged settlement prior to the date mentioned in the warrant for the commencement of interest.(1)

(1) 3 Yeates 290. 2 Sm. Laws 15. 4 Serg. & Rawle 434, 474. 3 Wash. C. C. Rep. 369. 3 Serg. & Rawle 379, 520. 6 Serg. & Rawle 109.

But although not, in itself, binding on third persons, the exercise of the authority of the board is attended with many advantages. It may assist incomplete titles by correcting errors, ordering re-surveys, or doing what a deputy surveyor or even head of a department alone could not do. Thus, after a return of survey, a deputy survevor cannot change the survey made; but the board may order it to be done, and it is good, as between the commonwealth and the claimant, though it will not affect the rights of others. So, in other cases, it may, as far as respects the commonwealth, confirm a title, imperfect in itself, where not forbidden by law. It is also material in many cases to show a vigilant pursuit of a claim; as an early prosecution of right before it is an important consideration, when a party has notice of an opposing claim. The minutes of what passes before it are admitted in evidence at law for this purpose, and to show the acts and conduct of the parties. It frequently happens that, by its interposition, difficulties are obviated and disputes terminated by the opinion of the board and acquiescence of the litigants. Respect is paid by courts to its decrees as the opinions of men conversant with land titles, and with the customs and practice of the office.(1)

But it is to be observed, that though in general, as has been stated, their decision is not binding, yet there are cases in which it gives the party succeeding the

(1) 2 Sm. Laws 16. 1 Serg. & Rawle 520.

benefit attending possession, and may, by lapse of time, become a final determination of the right; and the scope of these is now pretty large. For it is enacted by the act of 3d April 1792, sect. 11, that where any *caveat* is determined in the usual manner by the board of property, the patent shall, nevertheless, be staid for six months, within which time the unsuccessful party may enter his suit, but not afterwards. The party succeeding before the board, is to be deemed in possession for the purpose of trying the title. If no suit be entered at the end of six months, a patent is to issue according to the determination of the board. If a suit be entered, a patent is to issue to the party gaining at law. And it declares that, in both cases, the patent shall remain a full and perfect title against all parties to the *caveat* or suit, with a saving for infants, &c. of twelve months after disability removed.

This provision does not extend to all lands in the state. It is confined to controversies respecting lands which were vacant and unappropriated at the time of the passage of this act of assembly. The declared object of the act was confined to that. It does not, therefore, embrace any lands claimed under rights or contracts antecedent to the passing of the law. But it extends to all lands which were then vacant, whether in the purchase of 1784, 1768 or prior.(1) The service of a declaration in ejectment within six months after the decision of the board, was held to be a commencement of

(1) 2 Sm. Laws 207. 5 Watts 194.

a suit, though not entered on the docket till after the six months.(1)

It may be observed, that the jurisdiction of the board of property is restricted to cases of imperfect titles, &c. When a patent has issued, the title, as regards the commonwealth, is perfect, and the board of property have no jurisdiction over it. They cannot, therefore, entertain proceedings by *scire facias* or otherwise, to vacate a patent which has been issued to a party. If they do, their proceedings are a nullity, and their minutes not evidence of anything.(2)

As to how far the acts or proceedings of the board of property are evidence, it is decided, that an order of the board and proceedings thereon for a re-survey of a warrant, noting the interference with another survey, is *prima facie* evidence against a surveyor claiming under the latter, though the order was made without notice to such party. So, an order made on a *caveat* against a survey, under which one party claimed, was allowed to be read, though the *caveat* was entered by a third person.(3)

Certified copies of depositions taken before them, deposited and filed in the office of the secretary of the land office, are evidence in a court of law under the act of 1781. But neither the originals nor copies are

(1) 2 Sm. Laws 480. (2) 3 Serg. & Rawle 160.
(3) 7 Serg. & Rawle 333. 2 Yeates 85.

evidence to prove the facts stated in them, even on a trial between the same parties; the proceedings in causes before them not having usually been conducted with much regularity: but, on the contrary, depositions have frequently been read there, when the adverse party had no opportunity to cross-examine. A party has been allowed, on a trial at law, to produce a deposition used before the board by the adverse party, to show the grounds on which they decided in favour of the latter.(1)

Depositions used before the board are papers of a public nature, and ought not to be withdrawn.(2)

(1) 3 Serg. & Rawle 346. (2) 1 Serg. & Rawle 534.

CHAPTER XXVII.

TEN PER CENT AND OTHER SURPLUS.

From early times, it was the practice at the land office, to accept a return of survey, although the quantity contained in it exceeded that specified in the warrant by ten per cent. This limit, however, was not observed by surveyors—from want of skill, carelessness or design; and the first proprietary, William Penn, endeavoured to correct it by ordering a re-survey of lands surveyed prior to his arrival, and after, with the design of cutting off the excess as his own, or obtaining payment for it. The legislature, by the laws of 1700 and 1711, authorized this, and enacted a mode of settling the disputes it might produce, by appointing persons to appraise the value of the surplus, or cut it off. These laws prevailed a short time. The first was limited in its duration, and the second repealed by the queen in council in 1713.(1) They were, however, carried into execution during their existence.

The practice still continued to survey large tracts

(1) 2 Sm. Laws 143.

of land on warrants calling for a much smaller number of acres. Fifty acre warrants were usual, and several hundreds of acres were sometimes returned on them. But by the second instruction to the deputy surveyors in 1765, they were directed not to survey, on any one warrant, more land than ten per cent over and above the quantity mentioned in such warrant, with the usual allowance of six per cent. Another instruction of April 13th 1767, states, that upon its being represented that many surveys are made and making, which contain more land than the warrant or application specifies, the governor orders that no surveys be received consisting of more than ten acres per cent above the quantity specified in the warrant or application.(1)

When, however, the surveys containing an excess of more than ten per cent were returned, and the question was, whether they should be received or rejected, it seems it was not deemed expedient rigidly to enforce this order: but the following order was made. May 13th, 1767, upon the representation of the surveyor-general, that great numbers of surveys had been returned both on warrants and applications, exceeding the quantities mentioned in the warrants or applications, and the ten per cent allowed the surveyors to exceed; and at this time to cut off the excesses of these surveys would, in a manner, put a stop to the business of the whole province; and

(1) 2 Sm. Laws 145.

it appearing that the surveyors have certified, that in many cases these excesses are to the advantage and interest of the proprietors, as they included land which by itself probably never would be taken up from its barrenness: the governor is pleased to order that as to what is past, the surveyor-general receive the returns of the surveys, though they should exceed the quantities mentioned in the warrants or applications, and the ten per cent. But that for the future, he strictly charged his deputies, that they shall not, under any pretence, return more than the quantity, with the usual allowance for roads, and the ten per cent, upon pain of being obliged, at their own expense, to rectify any surveys they shall return with such excess of quantity.

This continued to be the general rule: notwithstanding which, if the deputy certified that the surplus lands beyond the ten per cent were only desirable for the lands in the warrant, there was little hesitation in accepting the return of such survey with the surplus. Judge Smith stated, that in a case before the revolution, he surveyed four hundred acres, on a three hundred acre warrant, after the year 1767, which had been accepted, on the party's paying for the surplus; and he knew of no case where a survey containing more than ten per cent had been rejected by the land office, if it did not interfere with the rights acquired by others before the return of the survey. It was certain, the proprietary officers were in the habit of sometimes dispensing with the general rules of office,

where no injustice was done by it; and in the case before the court, the question being, whether, on a warrant in 1751 for one hundred acres, a survey in 1788, of two hundred and eighty-seven acres and one hundred and thirty-seven perches, returned in April 1790, was good against one who claimed under a warrant in March 1790, the Chief Justice said, that many surveys had been accepted which were made since 1767, on old warrants, containing more than ten per cent surplus: and the title was held good by the court.(1)

But where the interest of another, though on a younger warrant, would be affected, the first warrantee, or applicant, must relinquish not only what exceeds the ten per cent, but the ten per cent itself, and be restricted to the quantity expressly called for.(2)

A survey containing on its face four hundred and twenty acres, but, in fact, seven hundred and fifty, ought to be inquired into by the board of property The bare acceptance by the surveyor-general, with out patent, would not be obligatory, when the person claiming under it had notice, before he went to expense in improvements, of an adverse claim.(3)

About the year 1811, the board of property compelled the person who came to patent a tract on which

(1) 2 Sm. Laws 165. (2) 2 Sm. Laws 164, 167.
(3) 6 Serg. & Rawle 310.

there was a surplus surveyed of more than ten per cent, to take out a new warrant for the surplus, or what they called a warrant of re-survey, to include the whole quantity, the party releasing the first warrant. This practice has long ceased. It rather tended to create embarrassment, and unsettle the rights of parties, and to produce expense and trouble.(1)

By the act of 2d April 1811, patents might issue on surveys before that time, returned and received by the surveyor-general, notwithstanding they contained an excess of more than ten per cent above the number of acres mentioned in the warrant; with a proviso, that no other person's right should be affected, &c. And by the act of 13th March 1817, warrants of acceptance and patents might issue on surveys made, or to be made, of any warrant, &c., though beyond ten per cent, provided the excess did not exceed one hundred acres, and was forthwith paid for, at the price then fixed.

By the act of 6th April 1830, the surveyor-general is directed to accept all surveys theretofore returned, when the excess does not exceed one hundred acres. Section two prohibits a greater excess than ten per cent thereafter. By section three, surveys made on warrants issued since the act of 1817, were allowed.

(1) 7 Serg. & Rawle 58.

CHAPTER XXVIII.

SIX PER CENT ALLOWANCE FOR ROADS, ETC.

From the year 1712 it was the custom of the proprietaries, and afterwards of the commonwealth, to allow to all grantees of vacant lands, without charge, an addition, in the proportion of six acres for every hundred acres. It was given for roads and highways, and as a compensation for the loss that might occur in making surveys, by reason of uneven grounds and barrens.

In 1701 a misunderstanding took place on the subject between the assembly and William Penn, who was here on his second visit. The assembly insisted that ten per cent should be added in all cases, and stated that such had been the engagements of the proprietary: alluding to what was called the law of property, passed at Newcastle in 1700, which took off all surplus lands, after allowance of four acres in the hundred, over or under, for difference of surveys, and six per cent for roads. William Penn in answer alleged, that he had consented to that, but did not incline to make himself debtor for deficiencies, when the land was not to be had: and proposed six per

cent to all persons. The assembly adhered to the ten per cent as to all existing grants, suggesting five per cent for the future. Nothing was done till 1712, when an act of the legislature directed surveyors to allow six per cent. This act was repealed the following year by the queen in council, but its provisions on the point seem to have continued, by general consent, in all grants of vacant lands since that time. The customary acre of Pennsylvania, therefore, in such grants, consisted of one hundred and sixty-nine perches and six-tenths of a perch, whereas the English statute acre (33 Edw. I. stat. 6, in force here), or what in Pennsylvania makes the acre, neat or strict measure, is one hundred and sixty square perches. William Penn's deeds of lease and release to the first purchasers made in England, stipulated for the latter method of measurement.(1)

As the country has become settled, and conveyances are made of parcels of tracts, the strict measure is the rule, in deeds and alienations, unless the other measure is given by agreement or understanding of the parties. In transfers of whole tracts as surveyed, the allowance passes to the grantee, unless excluded in the same manner.(2)

The origin of this per centage is to be traced farther back. It commenced in the concessions to the first purchasers, agreed upon by William Penn in

(1) Ante 24. 2 Sm. Laws 139, 254.

(2) Paull *v.* Lewis, 4 Watts 402.

1681, in England. They stipulated that when the adventurers should arrive here, a certain quantity of land or ground-plot should be laid out for a town on the river Delaware, and every purchaser should have so much land therein as would answer to the proportion he had bought in the country. But the great roads from city to city or great towns, as well as streets in such cities or towns, were first to be laid out from the proprietary's lands. When the proprietary and adventurers arrived here, only one city or great town was laid out in the province, namely Philadelphia, and though the streets in it were laid out, yet the roads to other cities or great towns could not be designated. It was on this account agreed that the proprietary, in lieu of laying out these roads, should give to every grantee of lands an additional quantity of land without price or quit-rent, which was to be for the public use for roads which should afterwards come to be required.(1)

For the purpose of public roads, therefore, land could be taken without paying any compensation to the owners, by virtue of the right derived from the allowance of six per cent. Accordingly, an act of the legislature, passed in 1699, directed that the king's highways, or public roads, should be laid out by order from the governor and council, and recorded in the council book; and that the justices of the county courts, after report of four out of six viewers, should

(1) 3 Yeates 372.

lay out roads or cartways, into the public, or highways, not exceeding fifty feet in breadth, and confirms former roads and cartways. This act gives no compensation to owners. But in 1700 the legislature, in authorizing county courts to lay out public roads, required that compensation should be made by the county, for the value of the *improved* land they might occupy: and subsequent road laws have adopted this principle, with the proviso that, in the assessment of damages, the advantage to the owner, by the making of the road, should be taken into consideration by the jury who made the assessment.

Where, as in many instances, and especially in cities, by the gradual increase of the value of land, it has become some hundred or perhaps thousand times greater than in its wild state, it is obvious that the six per cent is an item in the estimate hardly worth alluding to, and has been pretty much lost sight of. In parts of the state not settled, but remaining in their original forest condition, and continuing at their primitive cost with the mere addition of interest, the six per cent allowance is a full compensation.

The allowance of damages is so much a matter of legislative provision, that in the case of the Lancaster turnpike road, which was a highway from the city to a great town, it was held, that if the legislature did not think fit to give compensation to the owner, they were not bound to do it, but could authorize the taking of such land for public use, on the footing of the

allowance of six per cent for roads, &c., in the original grants.(1) But the turnpike, canal and rail road laws passed for the last twenty years, have contained a provision for making compensation on the principle of the road laws.

(1) 3 Yeates 156, 371.

CHAPTER XXIX.

QUIT-RENTS.

Quit-rents, in addition to the purchase-money, were commonly reserved in grants of lands by the proprietaries from the time of William Penn down. The quit-rents, it would seem, were obnoxious to the people from the beginning; and they were desirous to purchase them off. On William Penn's second visit, in 1701, when about to sail for England, application was made to him by the assembly, requesting liberty for the inhabitants, or possessors of lands, to purchase off their quit-rents, as he had formerly promised. He stated, in answer, that if it should be his lot to lose a public support, he must depend on his rents for a supply, and therefore must not easily part with them; and that many years had elapsed since he made that offer, and it was not then accepted. The contests between the assemblies and the governors concerning the right to tax these quit-rents and other real estate of the proprietary family, towards the latter period of their ownership in the province, contributed probably still more to render the quit-rents odious to the community: and during the revolution they were all abolished by the devesting act of 1779, except those ari-

sing out of manors.(1) The amount of them at that time is nowhere mentioned: but about the year 1740, they were stated as follows. New rents since 1732, £550 sterling a year. Old rents £420 sterling a year. Rents charged on settled lands, for which no grants had passed, £833. 6*s.* 8*d.* a year. Rents of manors and private estates, £3211. 6*s.* 8*d.* currency.(2)

(1) See the resolutions of the general assembly and the opinion of C. J. M'Kean on this subject. 10 Haz. Reg. 113.

(2) Statement by Thomas Penn. Franklin's Hist. Review. *Appendix, No. II.*

CHAPTER XXX.

RIVERS AND ISLANDS.

New Jersey, as granted by Charles II., in 1663, to the Duke of York, and by the latter to Lord Berkeley and Sir George Carteret in 1664, was bounded on the west by the river Delaware. The grant to William Penn, of the province of Pennsylvania, bounded it on the east by the river Delaware. Thus this river was excluded from both provinces, and consequently remained in the crown. The charter conveyed also to Penn the rights of use and passage in all waters, &c., leading to and from the province. So the grant by the Duke of York to William Penn and other proprietaries of West New Jersey, gave a right in all bays and rivers leading into the premises for navigation, fishing or otherwise: but such right could not be given by the Duke of York, as he had himself no title to the bay and river Delaware under the royal grant to him.(1)

The proprietaries of both these provinces, notwithstanding, asserted and claimed the right to the river

(1) 4 Wash. C. C. R. 385. 1 Baldw. C. C. R. 72.

Delaware, and laws were passed by their legislatures with reference to it. Chief Justice TILGHMAN states, that, not long before the American revolution, Lord Rochford attempted to obtain a grant from the crown of England, of some valuable islands in the Delaware, opposite and near to the Pennsylvania shore, under pretence that the charter to William Penn was bounded on the east by the river. But the proprietaries of Pennsylvania, having obtained a hearing before the king in council, and proved that they had always exercised jurisdiction on the river, always claimed these islands, and granted some of them for a valuable consideration, which had been improved at great expense by the purchasers, and were then very valuable, the claim of Lord Rochford was relinquished.(1)

At the revolution, the right of the crown in the river Delaware, where it formed the boundary between Pennsylvania and New Jersey, devolved on those states in their sovereign capacities; and in the year 1783, they entered into a compact for the adjustment of their territorial rights, and jurisdictions in the soil and waters of the river. This compact distributed the chief islands, and adopted the principle of proximity as the foundation of right to the others, and to such as might subsequently be formed. They referred to each state the power to regulate the rights of fishing, which has since been exercised by joint acts of assembly. The right to erect dams

(1) Kean *v.* Rue, 12 Serg. & Rawle 209.

and draw off the water has also been the subject of agreement.

All rivers, lakes and streams comprehended within the charter bounds of the province, passed to William Penn in the same manner as the soil. In grants from him, streams not navigable were covered by the survey, and belonged to the owner of the tract, who might convey the bed of the stream to one person, and the adjacent land to another.(1) When streams formed the boundary between adjoining surveys, each proprietor owned *ad filum aquæ*. The instructions of 1765 directed the surveyors, where the land adjoined rivers or large creeks, to lay out the survey at least three times the length from the river or creek that they were laid out in breadth upon it. The act of 8th April 1785, sec. 15, directed that one tract should not contain in front on any river more than one-half the depth of the tract.

The rivers of this state in which there is no tide, belong to the commonwealth, and not, as at common law, to the owners of the adjacent lands.(2)

Islands in navigable rivers were not subject to the ordinary modes of taking up lands by warrant and survey, settlement or otherwise. The proprietaries appropriated them to their own use by special warrants, when they fell within their purchases from the

(1) 1 Pet. 64, 69.

(2) 2 Binn. 475. 14 Serg. & Rawle 71.

natives. After the revolution, those comprehended within the purchase of 1784 were excepted in the act of 8th April 1785, first exposing the vacant lands of the commonwealth to sale, and were to be disposed of by the executive at private sale. The act of 6th March 1793 placed in the officers of the land office the authority to sell islands in the Susquehanna (not surveyed for the use of the proprietaries) *which were susceptible of cultivation*, with a preference to improvers, and the act of 2d April 1802 ascertained what constituted such an island, and further prescribed the manner of proceeding. The act of 27th January 1806 authorized the sale of islands in the Delaware, Ohio and Allegheny, by survey, valuation and patent, with a right of priority in improvers.(1)

(1) Hunter *v.* Howard, 10 Serg. & Rawle 243. Carson *v.* Blaser, 2 Binn. 475. Shrunk *v.* Schuylkill Navigation Company, 14 Serg. & Rawle 79.

CHAPTER XXXI.

MANORS.

The provisions of the nineteenth section of the charter of Charles II. to William Penn, evince a disposition on the part of the advisers of the crown to engraft on our provincial institutions some of the features of feudal nobility. They empower William Penn, and such as he might license, to erect any parcels of lands into manors, with a court baron and view of frankpledge (or court-leet), to be held by themselves or lords of other manors. The erection of such manors would, by the laws of England, have constituted the owners lords or barons, with their tenants or vassals holding under them, bound to attend and do suit and service at these courts. The court baron would have had jurisdiction over real actions concerning property in the manor, and debts or trespasses, under forty shillings: and the view of frankpledge (or court-leet) was an annual court of record, with conservation of the peace and punishment of minor offences. A manor could not legally exist without a court baron.(1)

(1) 2 Bl. Com. 90. 3 Bl. Com. 33. 4 Bl. Com. 273.

Whatever may have been the design of these clauses, no manor, in the sense above mentioned, was ever erected here. But there is reason to believe that William Penn, on his last visit, was induced to entertain the design to erect them: for he gave to Martin Zeal a paper written and signed by him, agreeing to let him have fifty acres in his manor of Pennsbury, at a quit-rent of three pence sterling per acre, "holding of the said manor, and under the regulations of the court thereof, when erected." And shortly afterwards, while on shipboard, by a separate commission to his commissioners of property, he gave them power to erect manors, with jurisdiction thereto annexed, as fully as he could do by charter. The commissioners of property, when applied to by Mr Growden, wisely declined exercising the power of erecting such a manor, perceiving how repugnant it would be to existing laws and institutions, and to the habits of the people.(1)

What are termed proprietary manors or tenths, were usual from the first settlement of the province, and were only nominal manors. They were nothing more than reservations by the proprietaries, from time to time, of lands which they appropriated to their own use, as they had a right to do. In the original concessions to the first purchasers, the proprietary in every hundred thousand acres reserved ten to himself. This reservation applied only to grants to the

(1) 2 Sm. Laws 140, 142.

first purchasers. In 1700, William Penn issued his warrant to the surveyor-general to survey for him five hundred acres of every township of five thousand, and, generally, the proprietary tenth of all lands laid out, and to be laid out; and such warrants were issued by successive proprietaries to every succeeding surveyor-general, and also for islands. The devesting act of 1779 reserved to the proprietaries all lands called or known by the names of the proprietary tenths or manors.

The earliest manor of this kind was Pennsbury, on the river Delaware, above Bristol, laid out on William Penn's first arrival, where a mansion was built for him. The manor of Norris was sold at an early period. Springetsbury, in York county, became a subject of litigation after the revolution, and the proprietary right succeeded.

The manors and tenths, about the year 1740, are stated as follows:

Conestoga 13,400 acres. Gilbert's 3,200. Springfield 1,600. Highlands 2,500. Springtown 10,000. Vincent's, 20,000. Richlands, 10,000. Springetsbury ——. Streeper's tract, in Bucks county, 500 acres. About twenty tracts in the counties, mostly 500 acres each. Total, 77,072 acres.(1)

(1) By T. Penn. Appendix to Hist. Review of Penn., No. II.

CHAPTER XXXII.

TENURES.

All lands in Pennsylvania were held under the proprietaries by the tenure of free and common socage, and the service of fealty and certain rent. The charter of Charles II. granted the province to William Penn, his heirs and assigns for ever, to be holden of Charles II. his heirs and successors, kings of England, as of his castle of Windsor, in free and common socage, by fealty only, for all services, and not *in capite* or by knight's service; yielding and paying therefor two beaver skins, to be delivered at his said castle, on the 1st day of January in every year, and also the fifth part of all gold or silver ore which should, from time to time, happen to be found within the limits of the province, clear of all charges.

If the charter had contained nothing more on the subject, the grants of land made by William Penn, and by his heirs and successors, must have been by the English law, to hold of the crown in the same manner as he did. For the statute *quia emptores*, 18 Ed. I. enacted, that from thenceforth the feoffee should hold of the chief lord, by such customs and

services as his feoffor held before. But the charter expressly provided against this, by allowing the proprietary to make alienations to others, who should hold directly of himself, and dispensed with the statute of *quia emptores* in the province. This power of dispensation the king or lord had by the common law, it being considered that the statute was made for the benefit of the chief lord, and he might wave a benefit introduced for himself.(1) The seventeenth section of the charter grants to William Penn, his heirs and assigns, power to aliene parts or parcels of the province to purchasers in fee simple, fee tail, or for life, or years, to be held of him, his heirs and assigns, as of his said seignory of Windsor, by such services, customs and rents, as he or they should think fit, and not of the crown. The eighteenth section gave purchasers power to take and hold such grants, the statute of *quia emptores* notwithstanding. The nineteenth section went a step further, and enabled the grantees, having license from the proprietary, to erect manors, with courts baron; to make grants in fee simple or fee tail, to be held of such manors; but the alienees of these grantees were to hold of the manors as they did. It follows, that the proprietary could grant his lands in socage, to be held directly of him, and he always did so. Every patent expressed that the land was to be held of the proprietaries, as of some of the manors they had,(2) in free and common socage, in lieu of all other services, with the reservation of one-fifth of all gold and silver ore at the pit's mouth.

(1) Co. Lit. 99, a. (2) 2 Sm. Laws 140.

When the commonwealth, by the revolution and act of 1779, succeeded to the rights of the proprietaries, for a valuable consideration paid, they did not abolish the royalties, franchises, and lordships of the proprietaries, but declared them vested in the commonwealth, for the use of its citizens. They abolished the tenure of the crown, and all services to be rendered to it, but not the tenure by which the grantees by patent held of the proprietaries. The seventh section confirmed the estates of grantees, by patent or otherwise, under the limitations and uses contained in them. In 1781, when the commonwealth established a land office for settling the grants which had been made in the times of proprietaries, the act of assembly gave the form of a patent, in which there is a direction to insert the tenure and reservation. And by section eleven, it declares, that the lands so granted shall be free and clear of all reservations and restrictions as to mines, royalties, quit-rents or otherwise, so that the owners shall hold the same in absolute and unconditional property, to all intents and purposes whatsoever, and all, and all manner of profits, privileges, and advantages belonging to or accruing from the same, and that, clear and exonerated from any charge or incumbrance whatever, excepting the debts of the owner, and reservation of one-fifth part of ores.

It would seem, then, that the ancient tenure is not abolished, but the commonwealth takes the place of the proprietaries as lord of the soil, and that lands are still held of the commonwealth by free and common

socage, with fealty and reservation of a portion of gold and silver ore. But on this point there are different opinions entertained, some holding that the property of the tenant, in fee simple, since the revolution, is allodial.(1)

(1) See, 1 Whart. 330, the effect of the charter on rents.

CHAPTER XXXIII.

SHOWING TITLE OUT OF THE COMMONWEALTH.

It is a prevalent opinion, that in ejectment it is necessary for the plaintiff to show title out of the commonwealth. The objection frequently occurs in our books of Reports, but the only authority for the doctrine is the *nisi prius dictum* of C. J. M'Kean, 1 Dall. 68, reported to have been said in 1782, when it is well known the principles of our land-titles were not settled, and that C. J. M'Kean entertained notions of the necessity of a complete office-right, which he afterwards changed.(1)

That case is thus stated. In this cause, M'Kean, C. J. said, that he had ruled it in a case at Lancaster, that the lessor of the plaintiff shall not be obliged to show his title further back than from the person who last died seised, first showing the estate to be out of the proprietaries or the commonwealth. It would seem that this case ought rather to be considered as relieving a plaintiff from the necessity of going through a long chain of conveyances not material to

(1) Ante 138.

the matter in dispute, which was probably the practice, than as imposing on him any new requisition. But still it inculcates the necessity of his showing even when he has traced his title to the person last seised, that the title was out of the proprietary or commonwealth.

The only case in which the principle was enforced that can be found reported, is that of Hylton *v.* Brown (in 1804), 1 Wash. C. C. Rep. 204, in which Judge WASHINGTON nonsuited the plaintiff on this objection. On consideration, however, he set aside the nonsuit, declaring that he had permitted his judgment to be influenced more than it ought to have been by the nisi prius opinion of the chief justice. He decided that in ejectment the plaintiff must show (and it is enough for the purpose that he does show) a right of entry, or, in other words, a right of possession. If he prove twenty years possession, or the seisin of his ancestor, and a descent cast, it is, in general, sufficient prima facie, unless the defendant show a better right. But the defendant may succeed by showing a better right in himself, or by showing it out of the plaintiff. But, he asks, is it sufficient for the defendant to show an original title in the proprietary? If the plaintiff show a right of possession in himself, this he thinks certainly sufficient against every person but the proprietary. If the defendant rely upon the original title of the proprietary, he must show it to be a subsisting one, either in the proprietary or in some one claiming under him. He admitted the rule to be correct as laid down in the case cited, if the suit be

against the proprietary or some one claiming under him.

In an elaborate note, appended by Judge WASHINGTON to this case, on publishing his Reports in 1826, he restricts the rule even still further. When he said that it "might be necessary to show title out of the proprietary in a suit against him or some one claiming under him," he states, was meant, some one who was a tenant of the proprietary. For admit the proprietary or his tenant entitled to the benefit of the maxim, *nullum tempus occurrit regi*, by which they would be privileged against twenty years' possession or a descent cast, yet a third person would not be. And he goes on even to doubt whether the rule applied in a suit against the proprietary, or whether there is any difference between him and a stranger. This decision of Judge WASHINGTON may be considered as entirely overruling the opinion of C. J. M'KEAN, in Shrider *v.* Nargan,(1) and as placing the law of ejectment in Pennsylvania on the same footing as it is elsewhere.

In our state courts, there is no case in which the doctrine referred to has been enforced. In Riddle *v.* Murphy, the plaintiffs claimed as heirs of the devisees of C. Murphy, and the defendant claimed as devisee of one who purchased Murphy's title at sheriff's sale. It was held, that as both parties claimed under the same title, the plaintiffs were not

(1) 1 Dall. 68.

bound to trace back their title beyond Murphy. In Patton *v.* Goldsborough, which was ejectment for a house and lot in Huntingdon, the plaintiff and defendant both appeared, by the evidence, to claim under Dr William Smith, the original proprietor of the town. The defendant requested the court to charge, that the plaintiff could not recover, because he had not been in possession, nor shown any grant to Dr Smith, or title out of the commonwealth. The supreme court, on error, decided, that no positive proof was necessary of a grant by the commonwealth, because both parties claimed under the same title, and both gave evidence of title in themselves, derived from Dr Smith. In Stewart *v.* Shoenfelt, the objection was again made. Both parties gave evidence of sales of the land for taxes, and claimed under them. The Court said it was not necessary for the plaintiff to show title out of the commonwealth, because both claimed under it, which was an indirect admission by the defendant that the title had passed from it: for land could not be assessed for taxes while the title remained in the commonwealth.(1)

It may be remarked that this doctrine probably originated in the familiar principle, that in ejectment the defendant may defend either on his own title or that of a third person: and as all the lands in the province

(1) 7 Serg. & Rawle 230. 9 Serg. & Rawle 47. 13 Serg. & Rawle 360.

(with the exception of grants before the arrival of William Penn) belonged, in the first instance, to the proprietaries, the presumption, in the early period of the province, would be, that they so continued till the contrary was shown. But a change has taken place. Almost all the lands in the state have now been transferred to individuals, by title of some kind or other, and the presumption would perhaps be, that the land is not in the commonwealth. If the reason of this rule has ceased, the rule should cease: and a plaintiff ought not to be required to repel a presumption which no longer exists.

Besides, in the early periods of the province, warrants and surveys were completed by patents: the title was not considered out of the proprietary till the patent issued: and as the patent was matter of record, and described the land by metes and bounds, a plaintiff could produce an exemplification of it. But when imperfect titles came to be recognised, when numerous tracts of land were held merely by warrant, or application and survey, or improvement alone, without payment of the purchase-money or patent, a plaintiff who claimed under such right, could not prove the title out of the proprietary or commonwealth, for the legal title remained in them till a patent issued. The claimant had no more than an inchoate, imperfect right, often depending on his own vigilance, or that of others who interfered with him, which was finally held to be but an equitable right against the commonwealth. Still it was a legal title

against individuals, and sufficient to recover upon in ejectment. No third person was permitted to object that the plaintiff had not paid the purchase-money or obtained a patent. It is evident that any discussion of the relative rights of such claimants, would be useless, if it must first appear that the title was out of the proprietary or commonwealth; and yet many of the reported cases have arisen on contests between such claimants.

It may be suggested also, as a reason for the rule, that it was intended to prevent titles under Indian deeds. No one was allowed to purchase of the Indians but the proprietary himself: and the courts, therefore, required that the title should be derived from him.

CHAPTER XXXIV.

TAX SALES.

At various periods, especially subsequent to the purchases of 1768 and 1784, large quantities of vacant lands in the interior were purchased of the proprietaries and the commonwealth, by persons residing at a distance from the counties where the lands lay, on which they took out the warrants and paid the purchase-money, procured surveys and returns, patented the lands, and there rested, holding them in expectation of a rise in their value. The low price at which they were offered, and the belief that the surplus population of the Atlantic coast would flow into those regions, were the motives that induced this employment of the funds of the purchasers. These calculations were in a great measure disappointed; for the surplus population passed chiefly to the state of New York and valley of the Mississippi. The progress of settlement in the interior of Pennsylvania was obstructed by the chains of mountains intersecting the middle of the state, which rendered access to the uncultivated lands of the north and west difficult. Few left the eastern part to settle on the back lands which they or their ancestors had purchased, and the settlements which were made were

chiefly by persons without means. The gradual progress of settlement and cultivation introduced the necessity of public expenditures for opening and repairing roads, and for the administration of justice, which could only be defrayed by taxes. The usual mode provided by law for collecting county rates and levies and township assessments, was by distress and sale of the goods of the terre-tenant or occupier; but in regard to lands which were unseated, this recourse must necessarily fail. The owners were at a distance, the lands remained in their original situation, covered with forest, and the taxes frequently remained unpaid. It was not just that those residing on the spot should be obliged to bear all the burthens; and the owners of the lands derive a benefit from the general improvement of the country and the rise in the value of their property, without paying their proportion. The legislature began very soon after the revolution to adopt measures to enforce the payment of the taxes, by a sale, after reasonable notice to the owner, of the unseated lands themselves, or such portions as were requisite to pay the taxes due upon them. These are what are commonly called tax sales; and now, by the inattention of owners and the frequent resort to such sales for default of payment of the taxes, many titles have been devested from the original owners, and are held under deeds from some of the county officers empowered by law to dispose of them. Sometimes the purchasers have failed to pay the subsequent taxes, and thus the tax title itself has become devested by a new one of the same character. Questions on the na-

ture of these titles are of constant recurrence in practice, in many counties of the state, and begin to form a large and interesting branch of our laws in relation to real estate.

For a short time, in the early settlement of the province, unseated lands were liable to be sold for the payment of county rates and levies. An act of assembly, passed in 1705, for the more easy and effectual collection of the proprietary's quit-rents, recited that whereas divers persons, who are not residents within this province, have procured their lands to be located where the same, by the settlement of the neighbouring inhabitants, are greatly improved in value, and yet have not paid quit-rents nor public charges, for want of some person in the place to answer for them; and enacted that, after the 25th of March 1708, where any tracts of land or lots should be in arrears for the quit-rents yearly arising therefrom, or for the provincial or county rates assessed or to be assessed, or made payable for the same, it should be lawful for the clerk of the county where such lands lay, in the name of the proprietor, to sue such non-resident in the respective county court, as well for the arrears of quit-rents as taxes, and if there were no appearance, or they were unpaid for the space of three years or more before suit, judgment and execution to be awarded on so much of the lands as would satisfy the judgment. It appears, however, that by the act of assembly of 1724, all unsettled tracts or parcels of lands were exempted out of the assessments for county rates and

levies:(1) and this exemption seems to have continued until the year 1785: though, for provincial taxes laid to raise supplies, and for state taxes, unseated lands were made liable to sale by the county commissioners.(2) At length, by the act of 25th of March 1785,(3) they were subjected to sale for county rates and levies. A more special provision was made by the act of 11th September 1786,(4) but the authority to sell was suspended, by subsequent laws, till the 1st of August 1791, and after that the county commissioners were to proceed. By the act of 17th April 1795, further provisions were made for obtaining descriptions of unseated lands, in order that they might be taxed, and for their sale, in case of non-payment,(5) and the act of 1st April 1796 altered a part of the act of 1786. In 1799 the late act for raising county rates and levies was passed, which repealed former laws, and, in the twenty-fifth section, established a new provision for the sale of unseated lands,(6) and this section was repealed by the act of 3d April 1804. This last act, with its supplements, the principal of which is the act of 13th March 1815, now regulates the system for selling unseated lands for taxes.

The main distinction now existing between taxes

(1) Frankl. Ed. Laws Penn. 296.
(2) See act of 27th November 1755, and act of 27th March 1782.
(3) 2 Dall. St. Laws 279. (4) Ibid. 457.
(5) 4 Dall. St. Laws 475.
(6) Act of 11th April 1799. 4 Dall. St. Laws 517.

assessed on seated and unseated lands is, that the former are not, in general, any lien on the lands themselves, but only a personal charge against the owner or occupant; while, on the contrary, the latter constitute no personal charge against the owner, nor can he be sued for them, but the land must be looked to, and the owner may abandon the land whenever he sees fit, if he thinks it not worth the taxes.(1)

In what cases the land is to be considered as seated or unseated, has been a question. Whenever there is a family resident on the tract or part of it, whether the tenant is in by right or as a trespasser, it is seated. So, though no family resides on it, yet if it is cultivated, and profits drawn from it, or chattels are to be found there sufficient to pay the taxes by distress and sale, it is seated. If a person living on an adjoining tract, should clear over a few feet or yards, on a tract of woodland, it would not make the latter seated: but the cultivation of several acres would. A tract once seated may perhaps become unseated, if permanently abandoned and suffered to lie waste, but a temporary suspension of occupation or cultivation does not produce this effect.(2)

An unseated tract may become divided, so that a

(1) Burd *v.* Ramsey, 1 Serg. & Rawle 109. Stokely *v.* Bonner, 10 Serg. & Rawle 256.

(2) Stokely *v.* Bonner, 10 Serg. & Rawle 256. Campbell *v.* Wilson, 1 Watts 503. Shaeffer *v.* M'Cabe, 2 Watts 422. Erwin *v.* Helm, 13 Serg. & Rawle 151. Stokely *v.* Bonner, 10 Serg. & Rawle 256. Harbeson *v.* Jack, 2 Watts 124. M'Clelland *v.* M'Calmont, 3 Penn. Rep. 106.

part of it will become seated, and the residue continue unseated, and liable to be sold as such. Thus, if a tract of unseated land be patented, and afterwards a third person enter upon it claiming a part, and take out a warrant, and procure a survey of that part, and it is assessed in his name as seated, the residue of the tract, excluded by the survey, may be assessed and sold as unseated. So, if tenants in common of one tract, by agreement or otherwise, divide. But if without division, one places a tenant on a part of the land, the possession of one being the possession of all, the whole tract is seated. Unseated town lots have been held to be subject to assessment and sale for taxes.(1)

The act of 1804 required from the county commissioners, previous to any sale, a warrant from them to the sheriff or coroner, with advertisements of the time of sale; gave power to sell the whole, or any part of the tracts, as might be necessary for payment of the taxes and costs; the sheriff or coroner to take a bond with warrant of attorney from the purchaser, for any surplus money remaining after satisfying the taxes and costs, which bond he was to file in the office of the prothonotary, with an attested copy of his advertisement. The commissioners were required to file in the prothonotary's office the newspaper containing their advertisements, with the affidavit of at least one of the printers, which were to be evidence of notice. No action was to be brought after five years from the

(1) Campbell *v.* Wilson, 1 Watts 503.

sale, unless in cases of minors or insane persons residing in the United States, who were allowed five years after disability removed: where the recovery was effected, the plaintiff was first to pay the value of his improvements. By section four the bonds were made a lien, on which execution might issue if not paid when the action was entered. By section five sales were good, though the lands were not taxed or sold in the name of the real owner. By act of 4th April 1809 the county treasurers were substituted for the sheriffs and coroners.

These acts were designed to encourage purchasers of unseated land sold for payment of taxes; and the main provisions adopted for that purpose were, 1. To exempt the purchaser from the immediate payment of his whole bid, by allowing him to give bond for the surplus beyond what was requisite for paying the taxes and costs: that much was to be paid in cash. 2. To secure to him the value of his improvements, should he make any, in case the lands were ultimately recovered from him by the owner. 3. To remove one objection, that the land was not taxed or sold in the name of the real owner, an objection which would probably apply to a majority of the sales. Notwithstanding these encouragements to the purchaser, his title remained for the most part open to the difficulties which had attended former acts of assembly, in which experience had showed that scarcely in a single instance had the sales been so carefully conducted as to stand the test of judicial inquiry. A tax title be-

came at last considered as worthless, and the owners of unseated lands neglected to look after or pay the taxes.(1)

The general rule for the interpretation of statutes, authorizing certain persons to sell the property of an individual is, that the authority must be shown to have been strictly pursued as given. It was therefore incumbent on a party claiming under a sale of lands for taxes, to prove that the requisites of the acts of assembly were fully complied with, otherwise the title of the owner was not devested. The plaintiff was bound to show, step by step, the regularity of the proceedings, from the assessment to the sale, and if any link in the chain were wanting, the title was void. Thus, where the act authorized the county commissioners to issue a precept to the sheriff to sell the lands of the owner for taxes due and unpaid, but directed them to give previous notice of the time and place of sale by an advertisement in the newspapers, it was held that such advertisement must be strictly proved. So it seems it must have been shown that the assessment was perfectly regular. So the want of proof that the names of the county commissioners were returned to the court of quarter sessions and entered by the clerk, or that they had taken the oath of office, was fatal. This decision was afterwards dis-

(1) Creigh *v.* Watson, 1 Serg. & Rawle 40. Birch *v.* Fisher, 13 Serg. & Rawle 208. Parish *v.* Stephens, 3 Serg. & Rawle 298. Smith *v.* Merchand's Executors, 7 Serg. & Rawle 260.

approved of, the court saying that every thing ought to be presumed in favour of officers de facto. But the first decision seems rather to have the countenance of Mr Justice DUNCAN, in a later case, where it was held that a county treasurer suing a purchaser of lands sold for taxes, must show he had taken the oath of office. So the election returns of the assessors must be produced, or their existence proved and absence accounted for. Neither the minute-book of the commissioners with the oath of their clerk, nor indeed any parol evidence, sufficed.(1)

Where there had been sales of unseated lands for taxes made by virtue of the acts of 11th April 1799, 3d April 1804 and 4th April 1809, the precept of the commissioners to the treasurer not describing the land in dispute, or any land except by reference to an annexed schedule, was held not evidence without producing the schedule or accounting for its non-production. So the affidavit of at least one of the printers required by the 3d section of the act of 3d April 1804 to be filed, meant that with each newspaper there should be filed the affidavit of one of the printers of that paper.

Under the act of 24th March 1791, a commis-

(1) Wister's Lessee *v.* Kammerer, 2 Yeates 100. Young's Lessee *v.* Marten, 2 Yeates 312. Blair's Lessee *v.* Caldwell, 3 Yeates 284. Birch *v.* Fisher, 13 Serg. & Rawle 208. Miller's Lessee *v.* Moore, cited 3 Yeates 284. Blair's Lessee *v.* Caldwell, 3 Yeates 284. Riddle *v.* County of Bedford, 7 Serg. & Rawle 394.

sioners' deed on the sale of lands for taxes, is not evidence, unless proof is given that ten days' notice of the sale was given in three or more of the most public places, as required by the act. But on the assessment of the land in the name of one person, Nathan Luffborough, and sale in the name of another, viz. Nathaniel Luffborough (the former being the owner), the sale was good under the sixth section of the act of 3d April 1804, declaring sales valid, "although the land may not have been taxed and sold in the name of the true owner."(1)

To meet and remove these obstacles to the title of the purchaser, the supplementary act of 13th March 1815 was passed, the principle of which is, that the treasurer's sale and deed shall constitute a valid title to the purchaser, wherever the land is unseated, was assessed regularly or irregularly, and the tax unpaid, and the owner does not redeem the land within two years: provided the purchaser has performed the conditions required of him.(2)

The first section directs sales by the treasurer every two years (since altered to one year), on the second Monday of June; making it his duty to give notice in the newspapers, under a penalty of fifty dollars in every case: his neglect not to invalidate the sale. Section three requires payment of the purchase-

(1) Luffborough *v.* Parker, 16 Serg. & Rawle 358. Blair *v.* Waggoner, 2 Serg. & Rawle 472.

(2) Hubley *v.* Keyser, 2 Penn. Rep. 502.

money, or as much thereof as is requisite to pay taxes and costs, and the one dollar for the use of the prothonotary for acknowledging the deed: in cases of non-payment forthwith, suit is to be brought. Section four provides for the redemption by the owner within two years, on paying the amount of taxes and costs, and twenty-five per cent thereon to the treasurer. And in case of its being refused, or if the owner had paid the taxes previous to the sale, then he may recover the land, but in no other case. And the act declares that no alleged irregularity in the assessment or in the process or otherwise, shall invalidate the sale: with a proviso, in favour of orphans and insane persons residing within the United States, of two years to bring their action, and for the payment for improvements as before. The remaining sections give authority to the commissioners to buy in lands where the bid does not equal the taxes and costs, with a right of redemption within five years. They also give the form of a treasurer's deed to the commissioners. The act of 13th March 1817 requires the purchaser to pay as soon as the property is struck down. The treasurer may make sales under this act without a warrant from the commissioners.(1)

Since the passage of the act of 1815, the courts have discountenanced objections to the regularity of the proceedings, and evinced an inclination to sustain, by every reasonable means, the titles of purchasers of

(1) Turk *v.* M'Coy, 14 Serg. & Rawle 349.

lands sold for taxes, in consequence of the express provisions of this act altering the common law rule in relation to the construction of statutes which give special authority to certain persons, and directing that no alleged irregularity in the assessment, or in the process, or otherwise, should invalidate the sale.(1)

On the question as to the validity of a sale under the act of 1815, the amount claimed each year for each tract was only noted in the assessment, or in the warrant to the collectors on the back of the duplicate, and not in the books of the commissioners, as they ought to have been; this was held only an informality or irregularity, not vitiating the sale. So where the land lies in one township and is assessed by the assessor of another township, this is an assessment, though an irregular one, and is cured by the act of 1815.(2) Several other points under these acts of assembly have been the subject of judicial decisions.

1. To whom the provision requiring of the owner, in case of recovery, a previous payment of the value of the improvements, extends: whether it applies only to recoveries by infants or insane persons, or to all cases. And it has been held that one main object being to encourage purchasers by assuring to them, at all events, the value of their improvements, this provision is not confined to the cases of minors or insane

(1) Turk *v.* M'Coy, 14 Serg. & Rawle 349.

(2) Riddle *v.* County of Bedford, 7 Serg. & Rawle 390. Stewart *v.* Shoenfelt, 13 Serg. & Rawle 370.

persons, but extends to all persons whatever who may recover the land from the purchaser.(1)

2. From what time the limitation begins to run, whether from the sale or from the time the purchaser takes possession. In the first case in which this question occurred, it was held that the period of limitation began to run from the time of sale, by the express words of the act; and that for the purpose of enabling the owner to sue and recover in ejectment, when no one was in actual possession, the law would presume the purchaser in possession. That, however, was a suit on a note for the purchase-money of a tract of unseated land sold for taxes, and the defendant contended that the plaintiff's title under a commissioners' sale in 1806 was not good, because the five years limitation had not expired; but the defendant was in possession of the land, and had never offered to give it up to the plaintiff. In a later case the question was re-considered, and the decision was that the five years began to run from the time the purchaser took possession, and not from the sale; because, under our ejectment-law it was only from his taking possession the owner could bring ejectment.(2)

3. It is the duty of the purchaser to pay to the treasurer the amount of the purchase-money, or such

(1) Creigh *v.* Wilson, 1 Serg. & Rawle 40.

(2) Parish *v.* Stephens, 3 Serg. & Rawle 398. Waln *v.* Shearman, 8 Serg. & Rawle 357. But now, by the 4th section of the act of 29th March 1824, this case is provided for.

part as is necessary to pay off the taxes and costs, and the sum of one dollar for the acknowledgement of the deed, in addition to the taxes and costs. All that in any event he is bound to pay is the amount of his bid; if that exceeds the taxes and costs and one dollar additional, he is to give bond for the surplus; if it equals those items, no bond is to be given, for there is no surplus.(1)

4. As to the purchaser's bond.—On the part of the purchaser is imposed the duty of filing a bond for the surplus money beyond the taxes and costs, at the time he receives the deed, and if he omits for two years to do so, the title of the owner is not devested. But if the treasurer omits to file in the prothonotary's office the bond given by the purchaser, that does not avoid his title; he is not to suffer for the negligence of the officer.(2)

5. The owner, or some one authorized by him, can alone redeem unseated lands sold for taxes.(3)

6. The assessment was on a tract of four hundred and thirty-seven acres; the sale and deed were for three hundred and eighteen acres of the tract: held

(1) Turk *v.* M'Coy, 14 Serg. & Rawle 349. Riddle *v.* County of Bedford, 7 Serg. & Rawle 394.

(2) Sutton *v.* Nelson, 10 Serg. & Rawle 238. White *v.* Crawford, 1 Watts 42.

(3) M'Bride *v.* Hoey, 2 Watts 436. S. C. 1 Penn. Rep. 54. Dubois *v.* Hepburn, 10 Peters 1.

good, and that it gave to the vendee the right of election of such part as he might choose.(1)

7. When taxes are laid on unseated lands as the property of the warrantee, and they are sold as such, it is *prima facie* evidence that the property of the lands continued in the warrantee, so that a release by a purchaser to such warrantee is good under the act of 24th March 1817, requiring a release of all interest in the lands under such sale before recovering back money formerly paid. The reason of passing this act was that most of the commissioners' sales were void, because not conducted according to law; and the owners of the land, knowing them to be void, would not receive the money paid by the purchasers beyond the amount of taxes and costs: consequently, it remained in the hands of the commissioners, to their private benefit. This act was made to authorize the recovery back of this money, and was confined to cases in which sales had been made prior to 1800.(2)

8. County rates and levies are taxes within the act of 1st March 1780, exempting from taxes lands granted to the officers and soldiers of the Pennsylvania line in the service of the United States as a reward for their revolutionary services; and donation lands granted by the state to such an officer are not, while owned by him, subject to county or road taxes.(3)

(1) Coxe *v.* Blunden, 1 Watts 533. See Erwin *v.* Helm, 13 Serg. & Rawle 151.

(2) Smith *v.* Merchand's Executors, 7 Serg. & Rawle 260.

(3) Finney *v.* Commissioners of Mercer, 1 Serg. & Rawle 64.

9. Payment of taxes for twenty-one years and upwards may be tantamount to adverse possession, and make a title good by the statute of limitations, which otherwise would be invalid where the owner has lain by, and not paid taxes or pursued his claim.(1)

10. While the title to the land remains in the commonwealth, it cannot be assessed for taxes.(2)

(1) 10 Serg. & Rawle 306. Read *v.* Goodyear, 17 Serg. & Rawle 350.

(2) Stewart *v.* Shoenfelt, 13 Serg. & Rawle 230.

CHAPTER XXXV.

CITY OF PHILADELPHIA.

The enlarged mind of William Penn perceived, in founding his colony, the opportunity it presented for establishing a great city within its bounds, that might be the centre of its legislation, trade, arts and sciences, and the source of its gradual civilization. Many of those who joined him in the enterprise were citizens of London and other towns and cities in England, and looked to a town life here. His plans prove that he perceived the advantages he possessed, and those which the future would probably develope. For, to use his own words, though he came into a wilderness, he did not intend it should remain so. That the city should be on a navigable river was a matter of course; and the eastern part of his province furnished the Delaware, a large navigable stream forming a boundary, and the Schuylkill, a smaller stream reaching to the interior. The result has corresponded with these expectations. Christina, Newcastle, Burlington, all prior to Philadelphia in their origin, have been far outstripped by the latter.

The first article of the concessions stipulated, that

so soon as it pleaseth God that the aforesaid persons arrive there, a certain quantity of land or ground-plat shall be laid out for a large town or city in the most convenient place upon the river for health and navigation, and every purchaser and adventurer shall, by lot, have so much land therein as will answer to the proportion which he hath bought or taken up upon rent. The fifth article is, that the proportion of lands that shall be laid out in the first great town or city for every purchaser shall be after the proportion of ten acres for every five hundred acres purchased, if the place will allow it (or two per cent).

He accordingly sent out an authority to certain persons whom he appointed commissioners, to lay out a town such as is here spoken of: of whom Thomas Holme, his surveyor-general, was one. They made inquiries and examinations of a proper place. The town, to comprehend the proportion here mentioned, or the 6000 or 7000 acres which the lands sold must have required, would have covered such an extent of ground as was fitter for farmers than citizens, and would have frustrated the main object of a city, that of proximity of families and convenience of intercourse. It would have delayed, if not prevented, the growth of a city. When William Penn arrived therefore, on consultation with such of the first purchasers as were here present, he fixed the city where it has since continued, bounded by the Delaware and Schuylkill and Cedar and Vine streets, with streets crossing at right angles—a plan imitated in later times. After

giving to the purchasers lots on the main streets, viz. Delaware and Schuylkill Front streets, and those adjoining, and also on High street, he made up their proportion by what were called liberty lands, situate in the county of Philadelphia, within a circuit of five or six miles northward and westward of the city. This plan contained the definitive settlement of the city bounds and site, and seems to have been universally approved. For we find William Penn sending out a plate of it to his agent in London; and stating in his letter, dated 16th August 1683, to the Society of Free-traders (one of the first purchasers), "Philadelphia, the expectation of those that are concerned in this province, is at last laid out, to the great content of those here that are anyways interested therein." So, in his answer to the assembly in 1701, he mentions his re-aplotment of the city, and that the allotment of the city seemed to be complied with by the purchasers then present.

At his second visit in 1699, sixteen years had passed, and a change had taken place in him and his province. He was no longer in the vigour and hope of manhood, enjoying at home the confidence of the monarch and his cabinet, and surrounded here by numerous personal friends and companions, looking up to him as the founder and leader. A revolution had precipitated his friend James II. from the throne; his province had been temporarily forfeited, and he had fallen into odium and personal danger. The city and province had grown much, and were peopled by

emigrants and others, mostly strangers to him. He was ill at ease in his private affairs. Matters of property acquired greater interest, and produced demands, replies and discussions in relation to concerns which formerly were not much regarded.

The roads and streets were provided for by the concessions, as follows. "But it is to be noted, that the surveyors shall consider what roads or highways will be necessary to the cities, towns or through the lands. Great roads, from city to city, not to contain less than forty feet in breadth, shall be first laid out, and declared to be for highways, before the dividend of acres be laid out for the purchaser; and the like observation to be had for the streets in the towns and cities: that there may be convenient roads and streets preserved, not to be encroached upon by any planter or builder, that none may build irregularly, to the damage of another. In this custom governs."

This agreement was complied with in the city plan by making nine streets, running from river to river, and twenty-three streets running across these north and south, crossing at right angles. Water street was soon after laid out on the Delaware bank, and other streets have subsequently been added by legal authority or private dedications.

The original plan of the streets in the western part of the city was changed, it is said, about 1741, when James Eastburn was surveyor-general. The centre

square and Broad street, originally in the middle, were moved farther west: and instead of eleven streets on the east and eleven streets on the west of Broad street, there were substituted fourteen between Broad street and the Delaware, and eight between Broad street and the Schuylkill. This change has been acquiesced in: being considered probably equally beneficial.(1)

In the Map of Philadelphia, the front streets on the Delaware and Schuylkill ran parallel to the others, leaving a large space between them and the rivers of unequal breadth in different places. As early as 1684 the commissioners of property made patents for some of the bank lots on the Delaware, and the practice was afterwards continued till they were all disposed of: it being stipulated that Water street (first called King street) should be laid out as it now is. In the first patents a restriction was imposed, that the grantees shouldnot build higher than four feet above the level of Front street. This restriction was soon dispensed with. The grants of these lots were on ground-rent of six shillings, but at the end of forty-one or fifty-one years, the improvements were to be valued, and one-third of the improved value annually paid in rent to the proprietary.

Two points on this tract were, from the beginning, used as landings, viz. the Blue Anchor (now the

(1) See Commonwealth *v.* Alberger, 1 Whart. Rep. 469.

Drawbridge), and the Penny Pot House (now the corner of Vine street). For these, the assembly applied to William Penn, in 1701, requesting they might be confirmed free to the inhabitants. To this he assented, and they were inserted in the charter to the city.

The assembly, at the same time, requested that the ends of the streets on the Delaware and Schuylkill be unlimited, and left free to be extended on the river as the inhabitants should see meet. To this William Penn also assented, declaring he was willing to grant them when and where improved. They were also comprised in the charter.

That portion of the city not allotted to first purchasers (which William Penn, in his answer to the assembly in 1701, terms one-fourth), lying chiefly in the middle part of the plat, was formerly termed commons. There seems to have been a dissatisfaction on this subject with the proprietary, as if, when he promised the first purchasers a certain quantity of land for a large town or city, the whole town plat should be for their benefit. But in his concessions he only promises them lots therein: and in 1701 this matter was settled with the assembly, and by the charter to the city.

CHAPTER XXXVI.

RECORDING ACTS.

Although efforts have from time to time been made in England to establish, by statute, a system for the registry of conveyances, yet they have always failed, and the practice only exists in a few places, where it was introduced by local custom. William Penn and the first adventurers perceived the advantages attending it, and made it one of their earliest items in the contemplated legislation for the colony. The deeds of lease and release to the first purchasers in England contained a covenant on the part of the vendee, within six months after a public register should be appointed and settled within the province, to cause them, or sufficient memoranda thereof, to be entered and enrolled in said register, in such manner as should be ordained and appointed.

Accordingly, one section of the laws agreed upon in England, between William Penn and the first purchasers of land in Pennsylvania, dated 5th May 1682, provided for the enrolment and registry of conveyances of land. This provision was re-enacted in the great law passed at Chester, Pennsylvania, imme-

diately after the first arrival of William Penn, and though variously modified, has continued to the present time. On this stock our system of conveyancing is grafted: for it will be found it was chiefly in order to promote the registry of conveyances, that a peculiar efficacy was given to them by the act of assembly of 1715, which constitutes the foundation of our present system of conveyancing.

The first law, above mentioned, agreed on in England, and re-enacted in the great law at Chester, 7th December 1682, in the twentieth section, enacts, that, "to prevent frauds and vexatious suits within the said province, all charters, gifts, grants and conveyances of land (except leases for a year or under), and all bills, bonds, and specialties above five pounds, and not under three months, made in the said province, shall be enrolled and registered in the public enrolment office of the said province, within the space of two months next after the making thereof: else to be void in law. And all deeds, grants, and conveyances of land (except as aforesaid) within the said province, and made out of the said province, shall be enrolled and registered as aforesaid, within six months next after the making thereof, and settling and constituting an enrolment office or registry within the said province: else to be void in law against all persons whatsoever. And in case the deeds of purchase in England, made of lands in this province, should be lost by the way, and so cannot be registered, copies of the deeds, attested by a public notary, shall be of equal force therein."

In the thirty-fourth section of this law, among the intended officers enumerated, "the master of the rolls" is mentioned: under which denomination, probably, was intended, the officer who was to keep the the enrolment office or registry here spoken of.

It is observable that this law is peremptory in requiring all deeds and conveyances of land to be recorded, under the penalty of being void, in one part of it—and in another part, void against all persons whatsoever. This manifests a determination to compel their registry; and so great a favourite was the system, that bonds, bills and specialties beyond a small sum, made here, were put on the same footing. In the multiplied transactions attending personal property, a registry of such choses in action would be found extremely burthensome and inconvenient. And this part of the law, if ever carried into effect at all, soon fell into disuse. Indeed, the law, as to conveyances of lands, seems not to have been fully complied with: for in 1688 the legislature passed an act ratifying former conveyances not recorded, and giving different times for recording them in future, and to repeal the act so far as respected bonds, &c. This act is as follows:

For as much as the forty-fourth chapter of laws enjoins the recording of all charters, gifts, grants, conveyances of land, bills, bonds, and such writings therein expressed, otherwise to be void in law; it is hereby enacted that, for prevention of great inconveniences,

and for the satisfaction of several owners of land, all such charters, gifts, grants and conveyances of lands, bills, bonds and such writings, though they are neither recorded, nor recorded according to law, yet they are hereby indemnified and are declared as good and authentic as if they had been duly enrolled and registered. Provided always, that all gifts, grants and conveyances of lands or sufficient memorandums of the same in this government, but made out of the same, may be brought to be recorded in the enrolment-office within twelve months; and all such instruments made of lands within this province or territories, may be brought to be registered within six months: otherwise to be void, as in the said law is declared. And further, it is the full intent and true meaning of this law, that no bills, bonds or specialties shall be required to be recorded under the penalty above mentioned, but that all such bills, bonds and specialties, which shall be recorded or enrolled in the said office, the record of the same shall in all courts of judicature be allowed and adjudged as valid as the original. And that this law continue for one whole year, and till the rising of the next general assembly, and until twenty days after, and no longer.(1)

The registry of bonds, bills and specialties was, therefore, no longer compelled. It was permitted and even encouraged, by making office copies as good evidence as the original.

(1) 2 Miller's Ed. Laws Penn. 1762, p. 25. App.

Whether this act continued in force beyond its original limitation does not appear; but five years afterwards, the whole system for compelling registries was abandoned, and the attempt was made to effect them by making copies of conveyances of land evidence, in the same manner as is here done in relation to bonds, &c. For this purpose an act was passed in 1693, entitled "The law about recording of deeds:"

"To prevent any damage or inconveniency that may arise for not recording of deeds, gifts, grants and charters, enjoined by the late laws of the government: Be it enacted, That such writings, though they are never recorded nor enrolled according to law, yet they are hereby indemnified and are declared as good and authentic as if they had been duly entered and enrolled. And it is the true meaning of this act, that no deeds or writings shall be required to be recorded; but that such deeds and writings as shall be enrolled or registered in the rolls'-office, and the exemplification of the records of the same in all courts of judicature shall be allowed and judged as valid as the original."(1)

It would seem that the experiment of enforcing a registry, by declaring the conveyance void unless registered, failed, and indeed the penalty was in itself too severe, and operated unjustly; for if strictly insisted on, it would have enabled one who had sold land and received the purchase-money, to reclaim it, be-

(1) 2 Miller's Ed. Laws Penn. App. 36.

cause the purchaser had not registered the deed. The consequence was, that the legislature were obliged to ratify former deeds not registered, and finally to abrogate the existing law, leaving it to the parties to consult their own convenience, whether they would record their deeds or not; the only advantage derived from it being that office copies would be evidence. Such a state of things was too opposite to the long cherished opinions of the colonists to endure for a length of time. And accordingly, as early as 1700, a new attempt on the subject was made. In the first volume of Miller's edition of the Laws of Pennsylvania, p. 49, is to be found the title of a law called "The law about acknowledging deeds in open courts," but this law is not in print. It continued till February 1705, when it was repealed by the queen in council.(1)

Without loss of time, however, another act was passed which shared subsequently the same fate. It was passed in 1705, and exhibits more skill in its structure than former laws, and aims at a more comprehensive system, intending, it would seem, as well to induce the habit of recording conveyances, as to abridge the tediousness of the English forms of conveyancing. This act deserves the more attention, because it contains the germ of our present system of

(1) 2 Miller's Ed. Laws Penn. App. 72. A complete edition of all the laws passed in Pennsylvania in early times is much wanted, and would well deserve the patronage of the legislature.

conveyancing, and though in force but a short time, served as a guide to subsequent legislation more acceptable to the mother country.

It is entitled "An act for acknowledging and recording deeds." It enacts that all deeds and conveyances, made or to be made, proved, acknowledged and recorded according to the true intent and meaning of this act,(1) shall be of the same force and effect for the assurance of the said lands, tenements and hereditaments, and for docking and barring estates tail, as fines and recoveries at common law, or deeds enrolled in any of the queen's courts of record at Westminster are or shall be in the United Kingdom.(2)

We perceive that the effect of this would be to do away fines and recoveries, feoffments and conveyances to uses by lease and release, bargain and sale, or otherwise; since all that was desirable in these modes of conveyancing could have been obtained by a single deed recorded. And it will be observed that it went farther in relation to fines and recoveries than any subsequent legislation; that part being omitted in the subsequent act of 1715, and left to stand as at common law.

For what reason is not known, but the hostility to our recording acts still subsisted in the mother coun-

(1) This must refer to a part of the act relative to recording which is not in print.

(2) 2 Miller's Laws Penn. 57. 1 Miller's Laws Penn. 176.

try, and this act shared the fate of the preceding one.

Another act was passed after this, in 1710 (9 Anne), entitled an act for the acknowledgement and recording of deeds, but was also repealed by the queen in council.(1)

Notwithstanding these successive repeals of the laws for the acknowledgement of deeds, such was the attachment of the province to the system, that there was probably no time when there was not a law in force on the subject. And this was persevered in till success attended the effort, and the act passed in 1715 was ratified by the crown, and has remained to this day the corner-stone of our system.

The entry of conveyances of real estate on the public records, to which all could have access to investigate titles, was not the sole object aimed at by the assembly. They wished to avoid the expense attending the tedious and intricate modes of conveyancing practised in England, the recording of which indeed would be a matter of serious labour and cost. They also desired to dispense with the English feoffments in a country where but a shadow of the feudal tenures existed. Two acts of assembly on this subject deserve notice.

In the first, which was passed in 1683 (35 Charles

(1) 1 Miller's Laws Penn. 181, 204. It is not in print.

II.), the legislature were so anxious to bring about simplicity in the tenure and grant of real estates, that they attempted to regulate the quantity of estate a person might hold, and to furnish forms of conveyances in a few words adapted to this purpose. It is entitled "Forms of grants of estates of inheritance for life, lives, or for years."

"Be it enacted, &c. That for avoiding long and tedious conveyances and the many contentions that may arise about the variety of estates, all grants of estates shall be either of the inheritance, or for life or lives, or for years, any number not exceeding fifty years, which grants shall be thus contracted in these words:

"A B, the —— day of ———, from him, his heirs and assigns, grants his (describe the bounds) with all its appurtenances, lying in the county of ——, containing —— acres or thereabouts, to C D and his heirs (if in fee), or to E F for his life (if for life), or to G H for one hundred years, if I K L M N O shall so long live, or to P Q for fifty years, for the consideration of —— pounds in money paid to A B and his heirs and assigns, upon the —— day of ——. In witness whereof he sets his hand and seal. Sealed and delivered in the presence of R S T. Acknowledged in open court, and certified under the clerk's hand and court seal the —— day of —— 16—, and registered the —— day of —— 16—."(1)

(1) 2 Miller's Laws Penn. App. 20.

Such a plan is obviously impracticable. A civilized society requires many varieties in the modifications of estates to adapt them to its emergencies from time to time, and the attempt to limit them to a few simple forms, is like that of prescribing two or three shapes of dress, and distributing them to all alike. It serves, however, to demonstrate the deep-rooted aversion to the complication of English tenures and conveyances, and the strong desire to reduce them to a more simple state, which had their influence on subsequent usage and legislation.

The other act of assembly above referred to, was passed about the same time, 1683, entitled "Forms of possession in transferring titles, &c. Be it enacted, &c. That all deeds of sale, mortgages, settlements, conveyances, except leases for a year, shall be declared and acknowledged in open court; and the form of possession in transferring of titles shall be by the party or his attorney delivering the said deed of gift in open court into the hands of him or his attorney to whom it is made: and that to stand good to all intents and purposes."(1)

This, we presume, was intended as a substitute for livery of seisin—adopting a delivery of the deed in open court, instead of a delivery of a symbol on the land itself. It was also designed that all acknowledgements of deeds should take place in open court.

(1) 2 Miller's Laws Penn. App. 21.

Let us now recur more particularly to the act of 1715, which had the good fortune to meet the approbation of the crown, and remains the law to this day. It is more skilfully draughted than any of the preceding acts, and will be found to embrace all the material provisions for the proper acknowledgement and recording of conveyances, and for giving effect to our simple forms. It was passed 28th May 1715, in the first year of the reign of George I., when Charles Gookin was governor under William Penn, and when there were but three counties in Pennsylvania, viz. Philadelphia, Bucks and Chester.

The first section provides that there shall be an office of record in each county, to be called the office for recording of deeds, to be kept in some convenient place in the respective counties; and that the recorder should duly attend the service of the same, and should provide parchment, or good large books well bound, wherein he should record, in a fair and legible hand, all deeds and conveyances brought to him for that purpose.

There is here, in the first place, provided a fixed place in each county, and a permanent officer to discharge the duty, who is compelled to record all deeds and conveyances brought to him for that purpose, certain fees being allowed in the latter part of the act. A plan preferable to that of one master of the rolls, as would seem to have been before the case, or to a registry among the records of the court, as is intimated in the act of 1683.

The second section restricts the right of recording conveyances of lands, tenements and hereditaments in this province. It requires, before recording, an acknowledgement, by the grantor or grantors, before one justice of the peace of the county where the lands lie; but in case the grantor is dead or cannot appear, a proof by two witnesses is equivalent. The justice is then to certify such acknowledgement or proof on the back of the deed, with the day and year, and the recorder, after recording it, to indorse under his hand and seal of office, the day he entered it, with the name or number of the book or roll.

One justice of the peace was thus early entrusted to take the acknowledgement or proof. No deed or conveyance could be recorded without this pre-requisite: and if the recorder should undertake to enter a deed of record without either, the registry would be a violation of this section and would be void. To a certain extent, or at least in the first instance, the recorder must judge whether the requisites of the case are complied with, though his decision would not bind the rights of the parties.

The third section provides for deeds made out of the province, brought here, where the lands lie, to be recorded. The proof (and the acknowledgement also, though not expressly mentioned) is to be before one of the justices of the peace of this province. If, however, made out of the province, it must be before the mayor or chief magistrate, or officer (which means

chief officer) of the cities, towns or places where the the deed is executed, and certified under the common or public seal of such cities, towns or places. This is the usual course pursued as to deeds, where the grantor lives in another state or in a foreign country; though, as to the latter, by a late law, a consul may act.

We now come to a part of the act providing for the effect which deeds thus recorded should have. And we shall here perceive that the legislature designed to induce the recording of deeds, not by inflicting penalties or forfeitures, as had formerly been ineffectually attempted, but by bestowing on conveyances, which conformed to the previous directions of this act, certain privileges, and giving to them a force and effect beyond what they would otherwise possess as mere unrecorded deeds.

The fourth section enacts that all deeds or conveyances made or to be made, and proved or acknowledged and recorded as aforesaid, which shall appear so to be by indorsement made thereon, according to the true intent and meaning of this act, shall be of the same force and effect here, for the giving possession and seisin, and making good the title and assurance of the said lands, tenements and hereditaments, as deeds of feoffment, with livery and seisin, or deeds enrolled in any of the king's courts of record at Westminster, are or shall be in the kingdom of Great Britain.

A feoffment, with livery of seisin, transfers to the

feoffee the full and perfect possession of the land. It is done on the land itself or near it. It places the feoffee in full possession and leaves him there. A deed of bargain and sale enrolled, conveys the estate to the cestui que use: the statute 27 Henry VIII. executes the use, and gives to him (for the most part) as full and absolute possession as the grantor himself had. Of course, a deed which had in itself all the operation of these deeds without their forms, transfers to the grantee complete and entire possession, and places and leaves him there: that is, in Pennsylvania, if the grantor himself has the possession. For a person here, though not in possession, may convey his title to another person, which he cannot do in England. If a feoffee in England, not in possession, should go on the land to make a feoffment with livery of seisin, he would transfer the possession to the feoffee, but it would be a tortious one. If he conveyed by bargain and sale, neither title nor possession would pass, because it is an innocent conveyance and passes only what the grantor might rightfully pass. Under this act of 1715, the conveyance is of the latter character, and passes only what may rightfully be conveyed: it never works a discontinuance or deforcement or forfeiture, or in any way operates wrongfully. Therefore, if the grantor has possession, it passes, but not otherwise.

So on the other words of the act, "shall be of the same force and effect here, for making good the title and assurance of the said lands, &c. as a feoffment or bargain and sale." Though neither the ceremonies nor

the language of a feoffment are observed; though there be not the requisites of a strict bargain and sale, yet the same effect shall be produced. All the advantages arising from the flexibility of conveyances to uses, in modifying the estates conveyed, all the solidity of a feoffment in giving actual possession, seem to be conferred on conveyances recorded. At the same time what is noxious is rejected. They are not to give possession where the grantor is out of possession. They are not to transfer any tortious estate. And so have our courts considered them.

We perceive here almost verified the wishes of the first legislature; and that without prescribed forms, any conveyance of lands duly recorded, carries with it all the vigour and efficacy of the two ancient modes of conveyancing: one at common law, by feoffment, the other originally of the use, which afterwards by statute 27 Henry VIII. was executed, viz., by bargain and sale enrolled. Of course our deeds are comparatively brief. It is sufficient if there appear an intent to convey, whatever may be the language, provided, however, that in limiting the quantity and quality of the estate, appropriate terms must be employed. We cannot by deed, any more than by feoffment or bargain and sale, ordinarily convey a fee simple without the word heirs, or a fee tail without the words heirs of the body. But if words of grant, bargain, sale, feoffment, release, confirmation are thrown in, *valeant quantum valere possint:* and the powerful machinery of the statute of uses is liberally em-

ployed in our deeds, and produces the desired effect. We have thus obtained by this act a power which is exercised with little trouble, and as effectively as the complicated conveyancing of the English practice by lease and release.

The remainder of this section makes copies certified by the recorder as good evidence, and as valid and effectual in law, as the original deeds themselves, or as bargains and sales enrolled in the courts of Westminster and copies thereof.

The next section is also a very important one, intended to abridge conveyancing by giving a certain uniform effect to a few words used in a deed recorded, and dispensing with what, would otherwise be long special covenants. It enacts certain words to constitute express covenants, to be such by law without further stipulation—being in their nature what natural justice and equity require on the part of the vendor in all sales of land.

This section provides that in all deeds to be recorded in pursuance of this act, whereby any estate of inheritance or fee simple shall hereafter be limited to the grantee and his heirs, the words *grant, bargain and sell* shall be adjudged an *express covenant* to the grantee, his heirs and assigns, to wit:

1. That the grantor was seised of an indefeasible estate in fee simple (that is as respects the acts of the grantor).

2. Freed from incumbrances done or suffered from the grantor (excepting the rents and services due to the lord of the fee).

3. As also for quiet enjoyment against the grantor, his heirs and assigns (unless limited by express words contained in such deeds).

And that the grantor, his heirs, executors, administrators and assigns, may in any action assign breaches as if such covenants were expressly made.

Thus, by force of this act, the three words, *grant, bargain and sell,* supply the place of three covenants which in English conveyancing occupy a large space. Hence our deeds are comparatively destitute of covenants. Our purchasers, it is true, do not so much rely on covenants of title; they search the records for that, and even the ordinary express covenants against the party's own acts are created by the act of assembly.

A proviso follows that the act should not extend to leases at rack rent, or to leases not exceeding twenty-one years, where the actual possession goes with the lease. These are not varied in their effect by being recorded. The residue of the act imposes penalties for forgeries or concerns mortgages only.

Under this act, there is no obligation on any one to record his deed. The eighth section requiring recording within six months, has been decided to apply only to mortgages. Of course a deed never recorded

was, at the time of this act and for many years after, good against subsequent purchasers and mortgagees. The only sanction of the law was of a rewarding character. It was not till 1775, sixty years afterwards, that it was enacted that a deed not recorded within six months should not be valid against subsequent purchasers. During this interval it is not surprising, that the object was by no means obtained, and that in the preamble of the act of 1775, complaint is made that by the different and secret ways of conveying lands, &c., such as were ill-disposed had it in their power to commit frauds, by means of which divers persons might be injured in their purchases and mortgages, by prior and secret conveyances and fraudulent incumbrances. By this act, therefore, new and more effectual provisions are made on the subject.

This act was passed the 18th March 1775, and embraces all deeds, and conveyances of or concerning lands, tenements or hereditaments, or whereby the same may be in any way affected in law or equity. These words are more comprehensive than those of the act of 1715. The term conveyance, whereby lands, &c. may be affected, would seem to embrace any written instrument creating or altering real estate, though not under seal. It requires that they be recorded within six months after execution, if executed within the province, and twelve months if executed out of it, and declares that if not so proved and recorded they shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for a valuable

consideration—unless recorded before the proving and recording such subsequent deed or mortgage.

It would seem that,

1. Every deed or conveyance, though not recorded, is good against the grantor himself and those claiming under him by descent, devise or voluntary grant.

2. If a deed be not recorded within the time appointed, a subsequent purchaser or mortgagee for a valuable consideration, whose deed is recorded before it, has the preference.

3. But a subsequent purchaser not for a valuable consideration, as if there be a voluntary conveyance, or for love and affection, which is termed a good consideration, has no preference, though the first deed is never recorded.

4. No priority is given to a judgment creditor over an unrecorded deed; but one who purchases at sheriff's sale under an execution on a judgment, becomes thereby a purchaser for a valuable consideration.

5. A voluntary deed recorded (where there is no fraud) is good against a subsequent purchaser for valuable consideration.

MORTGAGES.

It has already appeared by a reference to our primitive legislation, that the efforts of the legislature to establish a system for recording conveyances of land prior to 1715, were productive only of temporary acts, soon repealed. In some of these acts mortgages are particularly mentioned, but for the most part they were embraced by the general term of conveyances of land.

The act of 1705, which is still in force, gave the remedy on a mortgage, but it was the act of 1715 which regulated their recording, as well as that of deeds. It was more successful in inducing mortgagees to record their mortgages than it was in relation to deeds: because it prescribed a time within which the former should be recorded in order to possess validity, which was omitted as to the latter. The eighth section declared that no deed or mortgage or defeasible deed in the nature of a mortgage should be good or sufficient to convey or pass any freehold or inheritance, or to grant any estate therein for life or years, unless such deed was acknowledged or proved, and recorded within six months after the date thereof. There is considerable ambiguity in the language of this section, but the courts have construed it to apply only to mortgages, and not to other deeds and conveyances of land.(1)

(1) Recent laws have changed the time for recording.

Mortgages were not only distinguished from those of England, at the settlement of the province, and since, by the necessity of recording, but also by the remedy for recovery of the moneys due thereon. In England the mortgagee had two remedies against the land, in case of default by the mortgagor to pay the money due. First, to recover possession of the land mortgaged, by ejectment or without. Second, by bill in chancery to compel a foreclosure. During the twenty-four years that elapsed from the charter in 1681 to the year 1705, the mortgagee had only the *first* of these remedies: for there was no court of equity in which a chancery proceeding could be had. If the mortgagor failed to pay, and was insolvent, the mortgagee had only the land to resort to for indemnity, and he might get possession of it and receive the rents and profits. Still, however, this was often an inadequate remedy, for the profits of real estate, at that time, were low, and the mortgagee was obliged to keep an account of the rents and profits, because the equity of redemption still remained in the mortgagor for a period of twenty years. The preamble of the act of 1705 recites that, as the law then stood, mortgages had become no effectual security. The act then authorizes the mortgagee, twelve months from the last day when the mortgage-money should have been paid or conditions performed, to sue out a scire facias from the court of common pleas, directed to the proper officer, requiring him to make known to the mortgagor, his heirs, executors or administrators, to appear at court and show cause

why the lands should not be seized and taken in execution: to which the defendant might plead, if he appeared; if he did not appear, damages were to be assessed if necessary, judgment entered and the lands sold by a writ of levari facias, or delivered to the plaintiff free from all equity of redemption, and from all incumbrances of the mortgagor.

This remedy experience has proved to be convenient and speedy. It is the one usually adopted by the mortgagee, where there is no other fund to pay his debt: but, at the same time, the remedy by ejectment remains, and is sometimes, though rarely, resorted to by the mortgagee. So the mortgagee may be let into possession and receive the rents and profits, subject to account as before mentioned.

The effect of our recording acts has been to abolish various doctrines on the subject of mortgage, which have been fruitful topics of litigation in England. Such as tacking another debt to the mortgage—a third mortgagee, without notice of a second mortgage, protecting himself by buying in a first mortgage or incumbrance or term of years—a parol mortgage, or agreement to give a mortgage which has sometimes been treated as a mortgage.

APPENDIX 1.

COLONIZATION PREVIOUS TO PENN.

The history of the seventy-two years which preceded William Penn's arrival here is not without interest to recommend it to Pennsylvanians. An accurate research would perhaps prove, that something of the best points of our character is due to those who in primitive times, planted themselves along the shores of the Delaware, and contributed to form that population which afterwards, more or less, infused itself into other portions of the province.

Hudson and his companions, have the merit of being the first Europeans who visited Delaware bay, and discovered the outlet to the ocean, of one of the large rivers of the North American coast, admirably adapted to commerce, and giving easy access to an extensive tract, possessing a genial climate and a fertile soil.

The memory of Mey, who next ascended the river and built fort Nassau, in the neighbourhood of Gloucester, is preserved by the denomination of one of our capes. De Vries was the first to settle a colony

at Lewistown, but its melancholy fate compelled him on his return to abandon the river.

Where the Dutch had utterly failed, the Swedes seem to have proceeded without difficulty. Every thing in their project was auspicious. Minuit, who led their first colony in 1638, had been the Dutch governor at New York, and had there gained that practical knowledge which is so necessary in all enterprises. It enabled him to point out to the Swedish ministry the means of equipping an expedition, and furnishing it with the stores and materials necessary to its support. To Minuit belongs the honour of founding a successful colony, in a neighbourhood stained with the blood of the former settlers and abandoned by his countrymen as untenable. He inspired the Swedish queen with the idea of attempting a settlement on a coast where none of their nation had ventured. Ascending above the claims of the Dutch, with which, from his former station as governor of New Amsterdam, he must have been well acquainted, he passed above Bombay Hook, and avoided interference with their prior purchase or settlement. He commenced by purchasing of the Indians all their claim from the capes up to the falls of Trenton, thus evincing a determination to deal justly with them, and securing the tranquillity of his colony. He selected as the site of his settlement Christina, lying on the fresh water of the river, having the conveniences of a healthy spot and a considerable stream of water communicating with the river. Here he continued

until his death, three years afterwards. If Minuit has not, like Hudson, Mey and queen Christina, been so fortunate as to leave his name imprinted on the shores or streams of our country, he is not less entitled to remembrance, for having conceived and executed the first successful settlement in our borders, and laid the foundation of a colony that has continued to grow and spread, under various auspices, from that day to the present.

The same prudence and success mark the next Swedish governor, John Printz, whose administration, during the twelve years he resided at Tinicum, won the gratitude and reward of his own sovereign, and deserves commendation. Under his government the Swedes extended their settlements up the Delaware, and established themselves also on the Schuylkill. They had penetrated to the site of Philadelphia, and had occupied some of the contiguous country. Their population, it is true, was small; their settlements were feeble; but they were firmly planted, and they endured.

Printz, in managing the colony, had a delicate task to perform. He could not pretend to the title of first discovery; both the English and the Dutch had prior claims in this respect; and their title was well known to the crown of Sweden and to the colonists. The subsequent purchases by the Swedes from the Indians were of no avail to supplant this title. These purchases were useful in preventing hostilities by the

natives, but the possession of the Swedes could be secure, only while tolerated by the English and Dutch. Printz's safety consisted in avoiding collision with his neighbours. He was surrounded by those who might easily be excited. The Indians at one time conspired to destroy his settlement. The Dutch he induced to co-operate with him in some instances. The English at New Haven attempted to possess themselves of the Delaware, but he was relieved from them by the interference of the Dutch at New York, and by the refusal of the Plymouth colony to aid in the project.

The tenor of the crown's instructions inculcated on him the utmost caution and moderation, and the cultivation of a friendly intercourse with his neighbours, Indian and European. His twelve years administration appears to have been in the spirit of his instructions, and to have received the warm approbation of his employers. In granting to him Tinicum, the queen states it to be done in consideration of the long and excellent services which the lieutenant colonel and governor of New Sweden, her very dear and beloved John Printz, had rendered her and the crown of Sweden, and also on account of those he is daily rendering to her in the government of the country. In 1643, in answer to his application for leave to return home, she says, that on reflecting on the good services he had rendered, she and the company would extremely regret his immediate departure. In 1647, five years after the commencement of his government, she writes,

that the information from New Sweden is infinitely agreeable, and she had remarked with a particular satisfaction, the zeal, skill and activity with which he had filled his station of commander, and promises reward, desiring him to continue there. These are strong proofs that the services of Printz, had been propitious to the colony, and that they were highly appreciated by the enlightened ministry of Sweden. And so satisfied was the crown with the results of the enterprise, that we find them, just before its termination, endeavouring to excite their subjects to settle here, by granting the company and its dependants the monopoly of tobacco, and by securing the titles of settlers to such lands as they should occupy, and by maintaining the officers necessary to carry on the affairs of the colony, at an expense of upwards of 5000 rix dollars per annum.

The religion of the colony was the Lutheran, with toleration of the Dutch Reformed. Its religious supervision and instruction were carefully attended to. Minuit was accompanied by the Swedish minister, Torhellas, who died here in 1643. With Printz came Campanius, who remained six years in this country. He was a man of learning, and made himself acquainted with one of the Indian languages, into which he translated the catechism of Luther, afterwards published with a vocabulary of the idiom. He also composed historical notices of the colony of New Sweden, containing some valuable information, with a map and geographical observations by the engineer

Lindstrohm; recently translated by Mr Duponceau. The counsel and aid of such men must have been eminently useful to the colony in civil as well as spiritual affairs; and the care of the Swedish government on the subject shows their wisdom and forecast, and was a happy omen of success in the undertaking. A succession of pastors over the Swedish churches here followed till they terminated in 1831, with the decease of the worthy and respected Dr Collin.

Printz returned to Sweden in 1652. Risingh, who succeeded him after a short interval, seems to have departed from the prudent policy of his predecessor, notwithstanding the express injunctions of his instructions by no means to engage in hostilities with the Dutch, on account of the building fort Casimir near Christina, but to confine himself to protestations: foreseeing, as is said, in the instructions, that by a rupture with the Dutch, the English would take occasion to seize the fort and endanger all their possessions in the country. He, notwithstanding, attacked the Dutch fort and took it; but his success drew upon him the loss of his government, and at once put an end to the promising colony which the Swedes seem to have had much at heart.(1) The Swedish supremacy lasted sixteen years. The main body of this little colony consisted of persons who came here to better their fortunes, and they engaged chiefly in agriculture. This character of husbandmen they retained when William

(1) See ante, Chap. I.

Penn arrived, and by the pursuit of it many preserved their property and increased it, and transmitted to their posterity valuable settlements along the rivers. To conduct the affairs of trade and superintend the colony a few agents of the company came. We have a list of the officers of the establishment paid by the crown in 1655, in which are military officers from the captain down, and a company of thirty-six soldiers. The crown maintained three clergymen, a superior and a sub-commissary, a fiscal and engineer. The third class of the colonists were slaves, consisting of malefactors and vagabonds, residing by themselves and doing the drudgery of the rest.

There was, however, one defect in the Swedish system of colonization which distinguished it remarkably from the English, and renders the introduction of the latter in its stead a blessing for which nothing could have compensated. I mean the want of a free system of government. This we owe to Penn.

The Swedes seem to have parted from their little colony with regret, and continued to regard it with affection. The intercourse with the parent country was for a long time kept up. The crown supplied them with pastors and took an interest in their welfare. The colonists were soothed by the mild character and government of Penn and gave him their confidence. They participated in the prosperity that attended the province, obtaining a market for their products and enjoying a constant increase in the value of

their lands, whilst their civil and religious principles and their property were maintained and secured. Risingh, in a letter to Sweden written in 1654, stated that they at that time possessed four times as much land as when they arrived, and the country was more populous. They were, on their arrival, but seventy souls; but, including the Dutch and others, there were in 1654 three hundred and sixty-eight persons. In 1682, when William Penn came over, the number exceeded two thousand. By degrees the Swedish language wore out, the connection with Sweden gradually faded, even the Swedish forms of church government melted into its kindred of the English episcopacy, and the names of the descendants of the Swedes became in some instances changed into similar English ones. Many were and still are distinguished among our citizens, and do honour to the memory of Printz and his pioneers on our soil.

The Dutch by one blow gained all the advantages of the settlements made by the Swedes, and supported by the superior strength and maturity of the New York colony, retained their conquest. Henceforth, the Delaware settlements ranked as secondary, they were a mere appendage to the Dutch governor or directors at New York. It was all New Netherlands. The former on the North river, the latter on the South river, as they termed the Delaware. The sway of the Dutch endured about twelve years. They brought no new colonists in any numbers, but the scattered population continued to increase. The government

was conducted by lieutenants or directors appointed at New York, who, though their dominions on the Delaware were much larger than those of Printz, moved in a humbler sphere. The system continued the same under the English government at New York, after the conquest of the Dutch.

It appears from what has been said, that it would be a mistake to suppose that William Penn, on arriving with his charter and his little colony, landed at once among savages, unacquainted with Europeans, and that he had every thing to commence anew. On the contrary, we find that European settlements had existed for upwards of forty years on the shores of the Delaware, from the capes up: considerable tracts had been purchased from the natives, and forts erected: wars and revolutions among the colonists had occurred: the Indians, with the exception of the instance of fort Nassau, had uniformly been pacific: an organized government of some sort existed, with laws and courts to administer them: and small towns were built that furnished, to a certain extent, accommodation for habitations and supplies of the mechanic arts. The agriculturist had had experience of the seasons, the soil, and the crops adapted to it. Much of the country was explored: vessels for navigation were to be had: roads furnished communications: the character of the Indian nations became known by books, and by experience on the spot. The neighbouring colonies of New Jersey, New York and Maryland were more advanced, and capable of assisting in

materials and provisions. The prior colonists were principally from Sweden and Holland, nations distinguished for enterprise, industry and frugality. The seeds were planted, and would have grown here as they did elsewhere. But had the territory continued under the government of the Duke of York's lieutenants, at New York, it would have languished as a mere appendage to a distant authority; and its progress would have been slow and obscure.

Penn gave the province a new impulse. He placed a government on the spot, supreme in relation to its internal affairs, fully impowered to purchase and grant lands, to enact laws, to promote trade, secure property, and provide for the common welfare. He founded a great city, destined soon to equal, and, for a time, outstrip others in population and wealth. His own means, and those of other men of property in England, were liberally embarked in the advancement of his enterprise. Men of learning and science, able mechanics, intelligent merchants, accompanied and followed him. Religious enthusiasm co-operated. His high reputation, and the just and free principles of his colonization, attracted vast numbers from the continent of Europe. And when Pennsylvania became an independent province instead of a subordinate one, she began to increase beyond the example of any of the English colonies: till, in the year 1755, the number of inhabitants exceeded two hundred thousand. Penn effected this result chiefly by founding his colony on the broadest principles of civil and religious

liberty; giving to the people themselves the legislation and internal police of the province, and exciting thereby that alacrity and industry which no other motives can inspire. His principles of colonization and government drew the attention of his own and succeeding times. In their great features, such as legislation by the people through their representatives, equality of religious sects, trial by jury, amelioration of the criminal code, uprightness of dealing with the Indian tribes, provision for general education, virtue and intelligence in the community, justice, fidelity and benevolence in rulers, they have approved themselves the true practical principles of good government, and the surest safeguards of liberty and prosperity.

APPENDIX II.

INSTRUCTIONS TO DEPUTY SURVEYORS IN 1701.

Edward Shippen, Griffith Owen, Thomas Story and James Logan, to our trusty friend Isaac Taylor, greeting:

Whereas, by our commission under our hands and seals of the province, bearing even date herewith, we have nominated and appointed the said Isaac Taylor to be the proprietary's surveyor of the county of Chester. Now know, that for thy better guidance and direction in the execution of the said commission, we have thought fit to enjoin the following instructions for thy observation.

1st. Thou shalt faithfully execute every such warrant as shall be directed to thee, to the best of thy skill, knowledge and understanding, according to the express words and order of such warrant, and no otherwise, without special leave first had and obtained from us for thy so doing.

2d. Thou shalt not execute any warrant upon any surveyed lands, or manor or reputed manor lands, or on any other such lands appropriated to the proprie-

tary's use by any former survey, unless such land be expressly mentioned in thy warrant.

3d. Thou shalt lay out all lands as regular and nearly contiguous as the places will bear or allow of, unless directed by thy warrant to the contrary.

4th. Thou shalt make returns of every warrant directly into the surveyor-general's office at Philadelphia, with a protracted figure of the land exactly performed, and the field work annexed.

5th. Thou shalt deliver unto no person any draught, plot, figure or field work of his land, before thy return be made into the surveyor's office and be there allowed of.

6th. Thou shalt not make use of any chain-carriers but such as are of known honesty and of good fame and repute among their neighbours: which chain-carriers shall take a solemn attestation before some magistrate, justly and exactly to execute their trust, without favour, partiality or affection.

7th. Thou shalt not make returns of any survey but what hath actually been made by thee on the spot, and thou shalt take care that all outlines and bounds shall be fairly and visibly marked before thou quit the field.

8th. For thy work done, thou mayest receive the

following fees, viz. for surveying or re-surveying one hundred acres of land or a smaller quantity, ten shillings—for surveying every hundred, above the first hundred, five shillings—for re-surveying every hundred, above the first hundred, six shillings and eight pence. For surveying or re-surveying a town lot, six shillings.

9th. Out of all the fees that thou receivest for surveying or re-surveying of lands or lots, thou shalt pay to the commissioners' order, for the support of the general surveyor's office, for every first hundred, three shillings and fourpence—for every hundred after, one shilling and eight pence.

10th. When persons who employ thee pay thee the fees aforesaid, thou shalt receive over and above the same, three shillings and four pence for a draught and return into the secretary's office,(1) to be paid as the above mentioned third part of the fees.

For the observation of which instructions thou shalt give bond to the proprietaries with security in £200 and sign a counterpart of these presents by indenture.

Signed at Philadelphia by me, the said Isaac Taylor, the 28th of eleventh month, 1701.

ISAAC TAYLOR.

(1) There was then a vacancy in the surveyor-general's office. 2 Sm. Laws 143, 144.

APPENDIX III.

GENERAL INSTRUCTIONS TO DEPUTY SURVEYORS, PREPARED AND ISSUED FROM THE LAND OFFICE IN 1765.

Thomas Penn and Richard Penn, esquires, true and absolute proprietaries and governors in chief of the province of Pennsylvania, and counties of New Castle, Kent and Sussex, in Delaware, to A B, send greeting.

Whereas, our surveyor-general, with our approbation, hath, by a commission bearing even date herewith, appointed you, the said A B, surveyor of (naming the district and bounds). Now know, that for your better guidance and direction in the execution of the said commission, we have thought fit to enjoin the following instructions for your observation.

I. You shall faithfully execute every such warrant as shall be directed to you, to the best of your skill, knowledge and understanding, according to the express words and orders of such warrants, and no otherwise, without special leave first had from us for your so doing.

II. You shall not execute any warrant upon any

surveyed lands, or manors or reputed manor lands, or any other land, appropriated to our use by any former surveyor, unless such lands be expressly mentioned in your warrant.

III. You shall lay out all lands as regular and nearly contiguous as the places will bear, admit or allow of, unless directed by your warrant to the contrary.

IV. You shall make returns of every warrant into the surveyor-general's office, at Philadelphia, with a protracted figure of the land exactly performed, and the field works annexed, and that within six months after the receipt of such warrant or order of survey; but if any thing shall happen that the survey cannot possibly be performed within that time, you shall transmit an account, in writing, into the surveyor-general's office, containing the reason of such delay.

V. You shall not deliver unto any person whatsoever, any draughts, plots or field works of his land, before your return be made into the surveyor-general's office, and be there allowed of.

VI. You shall not make use of any chain-carriers, but such as are of known honesty, and of good repute among their neighbours; which chain-carriers shall take a solemn attestation before some magistrate, justly and exactly to execute their trust, without favour, partiality or affection.

VII. You shall not make returns of any survey but what hath been actually made by you on the spot; and you shall take care that all outlines and bounds shall be fairly and visibly marked before you quit the field.

VIII. You shall keep fair and regular entries, in order of time, of all surveys and re-surveys by you made from time to time, in pursuance of any warrant or order of survey which you shall receive, with a draught or plot thereof, and field works annexed, in books to be by you kept for that purpose; and our surveyor-general shall from time to time have free access to the said books of entries and other papers relating to your office as deputy surveyor, when he shall think necessary; and the said book of entries and other papers relating to your said office shall be by you (or those into whose hands your papers may fall after your decease) delivered up into the hands of our surveyor-general for the time being, or such other persons as we shall appoint, when you (or those into whose hands your papers may fall) shall be by us thereunto required.

IX. Out of all fees that you receive for surveying or resurveying of lands or lots, during the force of your commission, you shall pay unto our surveyor-general the full third part thereof.

For the true performance of which instructions you shall give bond to us, with security, in the sum

of £ , and sign a counterpart of these presents by indenture.

TO A. B., DEPUTY SURVEYOR.

In consequence of sundry letters received from the honourable the proprietaries, and the new regulations in the land office, you are to observe the following rules and orders in surveying of all lands in this province, as part of your instructions.

I. You shall survey for the use of the honourable proprietaries in regular figures generally, one-tenth of all lands, or five hundred acres out of every five thousand acres that you shall survey, and make return thereof for their use, on a warrant dated the 13th October 1760.

II. By their direction and order, you are not to survey on any one warrant more land than ten per cent over and above the quantity mentioned in such warrant, with the usual allowance of six per cent; and this rule you are to observe with respect to all past warrants, not yet executed, as near as reasonably may be.

III. You are not to survey any of the proprietaries' vacant or unappropriated land whatever, on any ticket or order from any person but the surveyor-general,

nor unless you have a copy of a regular warrant or application numbered, and to you directed by the surveyor-general himself, or his order.

IV. You shall lay out all lands that adjoin rivers or large creeks, at least three times the length from the river or creek, as they are laid out in breadth on the said river or creek, so that each purchaser may have a proportionable front on the water, provided the grounds will in any wise admit of it: and (you are) to lay out all lands contiguous, and as regular as possible; and you are to give at least ten days notice in each township in your district, by fixing up advertisement or otherwise, in one or more of the public places therein, signifying at what time you will attend in that township, to execute the new applications for all lands therein, requesting all persons concerned to attend, and provide to have their business completed.

V. You shall execute every application to you directed, and make return thereof into the surveyor-general's office, within six months after the date of such application, provided the persons who shall obtain the same, or some other person in their behalf, will attend and show the land to be surveyed, and pay for surveying the same as soon as completed; but in case the applier, or some person for him or her, do not show the land, and also pay the fees for surveying as soon as the same is done, or any other reasonable cause shall oblige you to delay the execution thereof, you shall enter your reasons for not perform-

ing the same on the back of the copies of such applications, and transmit an account thereof to the surveyor-general with all convenient speed. And you may observe by the regulations proposed in the land office, that much will depend on the care and despatch of the deputy surveyor; and I desire the people may not have any cause of complaint of you neglecting their business.

[Signed by the surveyor-general.]

N.B. You are to give some name to each survey you shall return into my office.(1)

(1) See 5 Sm. Laws xxix.

APPENDIX IV.

PRICES OF LANDS.

The following memorandum of the prices of land, showing them in detail, was furnished by Mr Henderson, chief clerk in the office of the secretary of the land office.

PROPRIETARIES' TERMS.

Previous to 27th December 1762, £15. 10*s.* per hundred acres, with the exception of a few warrants in the lower counties at £3. 10*s.* per hundred; interest from six months after date if not improved; if improved, from date of improvement.

From 27th December 1762 to 5th August 1763, £9 per hundred acres; interest from date generally.

From 5th August 1763 to 6th August 1765, £15. 10*s.*; interest from six months after date.

Locations and warrants from 6th July 1765 to 1st July 1784, £5 sterling; interest from six months after date if not improved; if improved, the date of the improvement regulated the price.

COMMONWEALTH'S TERMS.

From 1st July 1784 to 3d April 1792, £10; interest from date if unimproved; if improved, interest from date of improvement.—*Act of* 1*st April* 1784.

New purchase, 1784.—From 1st May 1785 to 1st March 1789, £30 per hundred acres; interest from date.—*Act of* 21*st October* 1784.

From 1st March 1789 to 3d April 1792, £20 per hundred acres; interest from date.—*Act of* 3*d October* 1788.

From 3d April 1792 to 1st September 1817, £5 for lands in the purchase of 1784, east of the Allegheny river and Conewango creek, unimproved.—*Act of* 3*d April* 1792.

Purchase of 1768 and the previous purchases.—From 3d April 1792 to 28th March 1814 (unimproved), at the rate of fifty shillings per hundred acres.—*Act of* 3*d April* 1792.

Lands in the purchase of 1784, lying north and west of the rivers Ohio and Allegheny and Conewango creek, £7. 10*s*., or $20, per hundred acres, from date of the act to this time.—*Act of* 3*d April* 1792.

Undrawn donation lands from 1st October 1813 to 25th February 1819, at the rate of one dollar and fifty

cents per acre; interest from three years after settlement.—*Act of* 26*th March* 1813.

Donation lands reduced from this date to fifty cents per acre; interest from three years after date of settlement.—*Act of* 25*th February* 1819.

Lands within the purchase of 1768, and the previous purchases, to be at the rate of £10; interest from date of warrant; except when improved, between the 3d April 1792 and 28th March 1814.—*Act of* 21*st March* 1814.

From 1st September 1817, lands within the purchase of 1784, east of the Allegheny river and Conewango creek, at the rate of £10; interest from the date of warrant; except where lands have been settled on agreeably to the act of 3d April 1792, between 3d April 1792 and 1st September 1817.—*Act of* 10*th March* 1817.

Connecticut claimants. Seventeen townships, Luzerne county.—Price fixed by the commissioners: First class, two dollars per acre. Second class, one dollar and twenty cents per acre. Third class, fifty cents per acre. Fourth class, eight and three-fourths cents per acre.—*Act of* 4*th April* 1799.

Remarks.—The price of all vacant and unimproved lands is now at the rate of £10 per hundred acres, *except* the following, to wit:

Donation lands, fifty cents per acre.

Lands lying north and west of the rivers Ohio and Allegheny and Conewango creek, twenty dollars per hundred acres.

Reserve tracts near Erie, Waterford, &c., price fixed by commissioners.

Lands improved agreeably to the act of the 3d April 1792, fifty shillings, and £5.

Lands held by Virginia warrants in the south west part of the state—the warrants show the terms.(1)

It is the practice in the land office, to charge for the excess of land above *ten per cent*, on fifty shillings warrants, at the rate of £10 per hundred acres. See *Act of* 13*th March* 1817.

(1) That part of the state within the counties of Westmoreland, Fayette, Green, Washington, and parts of Beaver and Allegheny, was claimed by Virginia. The dispute was settled by an agreement of compromise between the states of Pennsylvania and Virginia in the year 1780. Within this contested territory, the same lands, in some instances, were granted by each state to different persons: and by the terms of compromise it was agreed, among other things, that the senior title, when shown to have been obtained in conformity with the land-laws of the state under which the party claimed, should prevail, so that a Virginia title, if older than the Pennsylvania title, was to be preferred, and *vice versa*. See Act of 1st April 1784, 2 Sm. Laws 161 and 129; where this contest is noticed.

APPENDIX V.

FORMS FOR TAKING OUT WARRANTS.

Application for taking out a warrant by a settler for lands settled on.

J. D., of the township of Derry, in the county of York, applies for three hundred acres of land, situate in said township and county, adjoining lands of John Dunn on the east, James Bunting on the south, James Gray on the west, and Adam Boyd on the north: on which tract he has made an actual settlement and improvement.

J. D.

To the Secretary of the Land Office.

Oath and certificate for land settled on.

York county, ss.

Before us, the subscribers, two of the justices of the peace in and for said county, personally came J. G., a disinterested witness, and being sworn agreeably to law, did depose and say, that, to his certain knowledge, the above described tract of land was first improved in the month of July 1800, and not before; that grain has been raised thereon, and that the said J. D. and family are now settled and reside on the same tract of land, and have continued to reside thereon ever since the 1st day of June 1804 (or as the case may be).

J. G.

Sworn and subscribed this 22d day
of September 1810, before us

Oath and certificate for land improved but not settled.

York county, ss.

Before us, the subscribers, two of the justices of the peace in and for said county, personally came J. R., a disinterested witness, who being sworn according to law, did depose and say, that to his certain knowledge, the land above described was first improved in the month of May 1800, and not before (or as the case may be).

J. R.

Sworn and subscribed, &c.

Oath and certificate for unimproved land.

York county, ss.

Before us, the subscribers, two of the justices of the peace in and for said county, personally came J. G., a disinterested witness, who being sworn according to law, did depose and say, that to his certain knowledge the land described in the above application is unimproved, and as he verily believes, not heretofore claimed by any other person (or as the case may be).

J. G.

Signed, &c. &c.

Oath of applicant for lands prior to the last purchase of 1784 (*under act of* 13*th April* 1807).

York county, ss.

Before me, the subscriber, a justice of the peace in and for said county, personally came J. D., the above named applicant, who being duly sworn according to law, did depose and say, that to the best of his knowledge and belief, no warrant or other office right has issued for the land above described, either in his own name, or in the name or names of any person or persons, under whom he claims the same.

J. D.

Sworn and subscribed, &c.

[This is not necessary in the last purchase.]

Application for taking out a warrant for lands lying north and west of the rivers Ohio and Allegheny and Conewango creek.

J. D., of the township of Hamilton, in the county of Beaver, applies for three hundred acres of land, lying north and west of the rivers Ohio and Allegheny and Conewango creek, situate in township in said county, adjoining lands of John Dunn on the east, James Cummins on the south, James Gray on the west, and John Doe on the north.

J. D.

To the Secretary of the Land Office.

Oath and certificate for improved land.

Beaver county, ss.

Before me, the subscriber, a justice of the peace in and for said county, personally came R. R., a disinterested witness, and being sworn according to law, did depose and say, that to his certain knowledge the land above described was first improved in the month of May 1800, and not before, by J. D. (or as the case may be).

R. R.

Sworn and subscribed before me
the day of

Oath and certificate for unimproved land.

Beaver county, ss.

Before me, the subscriber, a justice of the peace in and for said county, personally came R. R., a disinterested witness, who being duly sworn according to law, did depose and say, that to his certain knowledge the land described in the above application is unimproved, and, as he verily believes, not heretofore claimed by any other person (or as the case may be).

Sworn to before me
the day of

APPENDIX VI.

FORMS OF WARRANTS.

Thomas Penn, after 1732.

BY THE PROPRIETARIES.

Pennsylvania, ss.

WHEREAS of the county of hath requested that we would allow to take up acres of land,

in the county of for which agrees to pay to our use, within the term of six months from the date hereof, at the rate of fifteen pounds ten shillings, current money of this province, for every hundred acres; and also to pay the yearly quit-rent of one half penny sterling for every acre thereof, to us, our heirs and assigns for ever: These are therefore to authorize and require you to survey, or cause to be surveyed, unto the said at the place aforesaid, according to the method of townships appointed, the said quantity of acres, if not already surveyed or appropriated, and make return thereof into the secretary's office, in order for confirmation; for which this shall be your sufficient warrant: which warrant and survey, in case the said fulfil the above agreement within six months from the date hereof, shall be valid; otherwise void.

Given under my hand, and the seal of the land office, by virtue of certain powers from the said proprietaries, at Philadelphia, this day of A. D.

To , Surveyor-General.

Between 1748 *and* 1761. *Vacating Warrant by the Proprietaries.*

BY THE PROPRIETARIES.

Pennsylvania, ss.

WHEREAS, by virtue of a warrant bearing date the day of a survey was made unto of the county of on a certain tract of land, containing acres situate in the said county; under certain conditions in the said warrant mentioned; which conditions not having been complied with by the said the said warrant and survey, made in pursuance thereof, are become utterly void: and of the county, having requested that we would grant him the said land, and agreed to pay to our use the consideration money which ought to have been paid by the said for the same: These are therefore to authorize and require you to accept and receive into your office the survey of the said tract of land, and make return thereof into our secretary's office, for the use and behoof of the said in order for further confirmation; and in so doing, this shall be your sufficient warrant.

Given under my hand, and the seal of the land office, by virtue of certain powers from the said proprietaries, at Philadelphia, this day of Anno Domini, one thousand seven hundred and

To , Surveyor-General.

Richard Penn.

BY THE PROPRIETARIES.

Pennsylvania, ss.

WHEREAS of the county of hath requested that we would allow to take up acres

of land

[provided the same land does not lie in or interfere with our manor of or any other of our manors or appropriated tracts] for which agrees to pay to our use, within the term of six months from the date hereof, at the rate of current money of this province, for every hundred acres; and also to pay the yearly quit-rent of one penny sterling for every acre thereof, to us, our heirs and assigns for ever, with interest and quit-rent to commence from

These are therefore to authorize and require you to survey or cause to be surveyed, unto the said at the place aforesaid, according to the method of townships appointed, the said quantity of acres, if not already surveyed or appropriated, and make return thereof into the secretary's office, in order for confirmation; for which this shall be your sufficient warrant; which warrant and survey, in case the said fulfil the above agreement within six months from the date hereof, shall be valid, otherwise void.

Witness Richard Penn, Esq., Lieutenant-Governor and Commissioner of Property of the said province, who, by virtue of certain powers from the said proprietaries, hath hereunto set his hand, and caused the seal of the land office to be hereunto affixed, at Philadelphia, this day of Anno Domini, one thousand seven hundred and seventy.

To , Surveyor-General.

After 1761. *John Penn. Maryland Right.*

BY THE PROPRIETARIES.

Pennsylvania, and Counties annexed, ss.

WHEREAS late of the county of in the province of Maryland, but now of county, upon Delaware, by humble petition hath represented to us that is seised and possessed of

which granted by the proprietary of Maryland under the annual quit-rent of shillings sterling per hundred acres, and which heretofore deemed to lie in the province of Maryland, but now (by the provincial line lately run and established between the said province of Maryland and the lower counties on Delaware) fallen into

county upon Delaware: And that is desirous of attorning and obtaining our grant of confirmation for the same, together with some vacant land contiguous thereto, for which vacancy he agrees to pay us at the rate of five pounds sterling, or the value thereof in current money of this province, for every hundred acres, with interest and the yearly quit-rent of one penny sterling per acre, to commence from months after the date hereof, and one year's rent on every alienation, and to pay the proprietary demand against the said granted land, and to take out the said patent of confirmation within two years from the date hereof; and for that purpose hath requested us to grant him our special warrant of re-survey for re-surveying the said original tract, and adding thereunto any vacancy which may be found contiguous thereunto, to which we have thought proper to condescend. These are therefore to authorize and require you to re-survey or cause to be re-surveyed the said original tract with the vacancy aforesaid, and to reduce the whole into one entire tract, and to make return thereof into our secretary's office in order for confirmation, carefully distinguishing in your draught and return the said original tract, and the added vacancy: and this shall be your sufficient warrant; which warrant, and the re-survey thereon made, in case the said fulfil the above agreement in all things on his part, shall be valid, otherwise void.

Witness John Penn, esquire, one of the proprietaries, who as well in his own right as by virtue of certain powers from John Penn, junior, esquire, the other proprietor, and the right honourable Lady Juliana Penn, his testamentary guardian, hath hereunto set his hand, and caused the seal of the land office to be affixed, at Philadelphia, this day of one thousand seven hundred and seventy

To , Surveyor-General.

After 1761. *John Penn.*

BY THE PROPRIETARIES.

Pennsylvania, ss.

WHEREAS of the county of hath requested that we would allow to take up acres of land

[provided the same land does not lie in or interfere with, our manor of or any of our manors or appropriated tracts] for which agrees to pay to our use, within the term or six months from the date hereof, at the rate of five pounds sterling, or value thereof in current money of this province, for every hundred acres; and also to pay the yearly quit-rent of one penny sterling for every acre thereof, to us, our heirs and assigns for ever, with interest and quit-rent to commence from six months after date hereof.

These are therefore to authorize and require you to survey, or cause to be surveyed, unto the said at the place aforesaid, according to the method of townships appointed, the said quantity of acres, if not already surveyed or appropriated, and make return thereof into the secretary's office, in order for confirmation; for which this shall be your sufficient warrant: which warrant and survey, in case the said fulfil the above agreement within six months from the date hereof, shall be valid; otherwise void.

Witness John Penn, esquire, one of the said proprietaries, who, as well in his own right, as by virtue of certain powers from Thomas Penn, esquire, the other proprietary, hath hereunto set his hand, and caused the seal of the land office to be affixed, at Philadelphia, this day of one thousand seven hundred and seventy.

To , Surveyor-General.

After 1761. *Manor of Maske.*

BY THE PROPRIETARIES.

Pennsylvania, ss.

WHEREAS of the county of York, hath requested that we would grant him our warrant for acres of land, in township, York county, being part of the thirty thousand acres of land which by our warrant of the eighteenth day of June, one thousand seven hundred and forty-one, we directed our then surveyor-general to survey on the branches of Marsh creek, on the west side of the river Susquehannah, then in the county of Lancaster, now York, for our own proper use, and the same to return under the name and style of our manor of Maske; and it now appearing to us, that the

said acres of land were settled before the issuing our said warrant for the said manor, we have notwithstanding condescended and agreed to grant the same to the said on the then common terms, the interest and quit-rent to commence on the first day of March, one thousand seven hundred and being the time of settlement, and for which he agrees to pay to our use, within the term of six months from the date hereof, at the rate of fifteen pounds ten shillings, current money of this province, for every hundred acres; and also to pay the yearly quit-rent of one halfpenny sterling for every acre thereof, to us, our heirs and assigns for ever: These are therefore to authorize and require you to survey, or cause to be surveyed unto the said at the place aforesaid, according to the method of townships appointed, the said quantity of acres, and make return thereof into the secretary's office, in order for confirmation; for which this shall be your sufficient warrant: which warrant and survey, in case the said fulfil the above agreement within six months from the date hereof, shall be valid, otherwise void.

Given under my hand, and the seal of the land office, by virtue of certain powers from the said proprietaries, at Philadelphia, this day of Anno Domini one thousand seven hundred and

To , Surveyor-General.

1784. *Last Purchase.*

The Commonwealth of Pennsylvania, ss.

WHEREAS of the of in the county of hath applied for, and paid into the office of the receiver-general of the land office the whole of the purchase-money for acres of land within the last purchase made of the Indians, at and after the rate of thirty pounds for every hundred acres of the same, agreeably to an act of assembly of the said commonwealth, passed the 7th day of April last, entitled "an act to provide further regulation, whereby to secure fair and equal proceedings in the land office, and in the surveying of lands." This said application and this warrant are numbered

These are therefore to authorize and require you to survey or cause to be surveyed for the said the said quantity of acres, within the said late purchase, agreeably to said act.

In witness whereof, president of the supreme executive council, hath hereunto set his hand and caused the less seal of the said commonwealth to be affixed, the day of in the year 178

To Esq., Surveyor-General.

1785. *Lottery Warrant.*

The Commonwealth of Pennsylvania, ss.

WHEREAS, of the of in the county of hath applied for, and paid into the hands of the receiver-general of the land office the whole of the purchase-money for acres of land, within the last purchase made of the Indians, at and after the rate of thirty pounds for every hundred acres of the same, agreeably to an act of assembly of the said commonwealth, passed the 7th day of April last, entitled "an act to provide further regulation, whereby to secure fair and equal proceedings in the land office, and in the surveying of lands;" and upon a fair lottery made and drawn, as by the said act is directed. The said application and this warrant are numbered These are therefore to authorize and require you to survey, or cause to be surveyed, for the said the said quantity of acres, within the said late purchase, agreeably to said act.

In witness whereof, president of the supreme executive council, hath hereunto set his hand and caused the less seal of the said commonwealth to be affixed, the day of in the year 17

To Esq., Surveyor-General.

Under act of 3d October 1788. *Seventeen Districts. Northumberland and Luzerne.*

The Commonwealth of Pennsylvania, ss.

Whereas of the of in the county of hath applied for, and paid into the office of the receiver-general of the land office the

whole of the purchase money for
acres of land within the last purchase made of the Indians, at and after the rate of twenty pounds for every hundred acres of the same, agreeably to an act of assembly of the said commonwealth, passed the 7th day of April 1785, entitled "an act to provide further regulation, whereby to secure fair and equal proceedings in the land office, and in surveying of lands;" and to one other act of said assembly dated 3d day of October 1788, entitled "a supplement to an act entitled an act to alter and amend an act entitled An act for granting and disposing of the unappropriated lands within this state." The said application and this warrant are numbered
These are therefore to authorize and require you to survey or caused to be surveyed for the said the said quantity of acres, within the said late purchase, agreeably to said act.

In witness whereof, president of the supreme executive council, hath hereunto set his hand, and caused the less seal of the said commonwealth to be affixed, the day of in the year 178

To Esq., Surveyor-General.

After 1776. *Warrant of Acceptance.*

Commonwealth of Pennsylvania, ss.

WHEREAS, by virtue and in pursuance of an order on application No. entered the day of 17 by there hath been surveyed a certain tract of land,

in the county of And whereas the said

And the said hath paid the purchase money at the rate of five pounds sterling per hundred acres, with the interest thereon due, agreeably to an act of assembly, passed the 9th day of April 1781, entitled, "an act for establishing a land office," &c., and a supplement thereto, passed the 25th of June, then next following. These are therefore to authorize and require you to accept the said survey into your office, and to make return thereof into the office of the secretary of the land office, in order for confirmation, by patent, to the said

And for so doing, this shall be your warrant.

In witness whereof, president of the supreme executive council, hath hereunto set his hand, and caused the lesser seal of the said commonwealth to be affixed, the day of in the year of our Lord one thousand seven hundred and eighty

To Esq., Surveyor-General.

After 1789. *Last Purchase. East of Allegheny river and Conewango creek.*

The Commonwealth of Pennsylvania, ss.

WHEREAS,

applied for and paid into the office of the receiver-general of the land office, the whole of the purchase money for acres of land within the last purchase made of the Indians, east of Allegheny river and Conewango creek, at and after the rate of five pounds for every hundred acres of the same, agreeably to an act of assembly of the said commonwealth, passed the 7th day of April 1785, entitled "an act to provide further regulation, whereby to secure fair and equal proceedings in the land office, and in surveying of lands;" to one other act of the said assembly dated 3d day of October 1788, entitled "a supplement to an act entitled An act to alter and amend an act entitled An act for granting and disposing of the unappropriated lands within this state;" also to one passed the 3d April 1792, entitled "an act for the sale of the vacant lands within this commonwealth." The said application and warrant are numbered

These are therefore to authorize and require you to survey or cause to be surveyed, for the said the said quantity of acres, within the said late purchase, agreeably to said acts.

In witness whereof, governor of the said commonwealth, hath hereunto set his hand, and caused the less seal of the said commonwealth to be affixed, the day of in the year 179

To Esq., Surveyor-General.

Under act of 3d April 1792. North and west of the Ohio and Allegheny rivers and Conewango creek.

The Commonwealth of Pennsylvania, ss.

WHEREAS of the county of hath by his application filed in the land office, set forth that acres of land lying north and west of the river Ohio and Allegheny and Conewango creek

for which he agrees to pay, immediately, into the office of the receiver-general for the use of this state, at the rate of seven pounds ten shillings per hundred acres, in gold, silver, paper money of this state, or certificates; agreeably to an act of assembly, passed the 1st day of April 1784, and to an act passed the 3d day of April 1792, entitled "an act for the sale of vacant lands within this commonwealth." These are therefore to authorize and require you to survey, or cause to be surveyed, unto the said at the place aforesaid, according to the method of townships appointed, the said quantity of acres, if not already appropriated, and to make return thereof into the secretary's office, in order for confirmation to the said his heirs and assigns, he or they cultivating, improving and settling the same, and complying with the conditions, and requisitions in the last recited act expressed; for which this shall be your warrant.

In witness whereof governor of the said commonwealth, hath hereunto set his hand, and caused the less seal of the said commonwealth to be affixed, the day of in the year of our Lord A. D. 179

To Esq., Surveyor-General.

Under the act of 1st April 1794. Within the old Purchase.

The Commonwealth of Pennsylvania, ss.

WHEREAS of the county of hath requested to take up acres of land

in the county of (provided the same land is not within the last purchase made of the Indians), for which he agrees to pay, immediately, into the office of the receiver-general, for the use of this state, at the rate of ten pounds per hundred acres, in gold, silver, paper-money of this state, or certificates, agreeably to an act of assembly, passed the 1st day of April 1784. Interest to commence from the

These are therefore to authorize and require you to survey, or cause to be surveyed, unto the said at the place aforesaid, according to the method of townships appointed, the said quantity of acres, if not already surveyed or appropriated; and to make return thereof into the secretary's office, in order for confirmation, for which this shall be your warrant.

In witness whereof, president of the supreme executive council, hath hereunto set his hand, and caused the less seal of the said commonwealth to be affixed, the day of

To , Esq., Surveyor-General.

Under the acts of 3d April 1792 and 22d September 1794, &c.
Warrant within the old Purchase.

The Commonwealth of Pennsylvania, ss.

WHEREAS of the township of in the county of hath requested to take up acres of land

in the county of (provided the land is not within the last purchase made of the Indians), for which he agrees to pay, immediately, into the office of the receiver-general, for the use of this state, at the rate of per hundred acres, in gold, silver, paper-money of this state, or certificates, agreeably to an act of assembly, passed the 1st day of April 1784; and to an act, passed the 3d day of April 1792, entitled "an act for the sale of vacant lands within this commonwealth;" and also agreeably to another act of assembly, passed the 22d day of September 1794, entitled "a supplement to the act entitled an act to prevent the receiving any more applications

or issuing any more warrants except in certain cases for lands within this commonwealth." Interest to commence from the

These are therefore to authorize and require you to survey, or cause to be surveyed, unto the said at the place aforesaid, according to the method of townships appointed, the said quantity of acres, if not already surveyed or appropriated; and to make return thereof into the secretary's office, in order for confirmation, for which this shall be your warrant.

In witness whereof, governor of the said commonwealth, hath hereunto set his hand and caused the less seal of the said commonwealth to be affixed, the day of in the year

To , Esq., Surveyor-General.

Present form of Warrant for land in the old Purchase and east of the Allegheny, &c.

The Commonwealth of Pennsylvania, ss.

WHEREAS of the township of county of hath applied for

in the county of for which he paid into the office of the state treasurer, at the rate of per hundred acres. Interest thereon from the to be paid agreeably to the several acts of assembly in such case made and provided. These are therefore to authorize and require you to survey, or cause to be surveyed, unto the said the quantity of acres by applied for, at the place aforesaid, if not already surveyed or appropriated, and to make return thereof into the land office, for which this shall be your warrant.

In witness whereof, secretary of the land office, hath hereunto set his hand, and affixed the seal of the said office, the day of A.D. 183

Secretary of the Land Office.

To , Esq., Surveyor-General.

After 6th March 1793. *For Islands in the Susquehannah river.*

The Commonwealth of Pennsylvania, ss.

WHEREAS, in pursuance of an act of assembly of the said commonwealth, entitled "an act directing the sale of certain islands in the river Susquehannah," passed the 6th day of March 1793,

by application, in writing, dated the
and filed in the land office, requested to take up an island, situate in

And whereas, in pursuance of an order of the board of property, the said island hath been valued at dollars
per acre, which

hath paid into the office of the state treasurer.

These are therefore to authorize and require you to survey, or cause to be surveyed, unto the said the above described island, if not already appropriated; and to make return thereof into the land office of this commonwealth for confirmation. For which this shall be your sufficient warrant.

In witness whereof secretary of the land office, hath hereunto set his hand and affixed the seal of said office, the
day of A. D. one thousand eight hundred and

To , Esq., Surveyor-General.

INDEX.

Abandonment, - - - - 133, 139, 147, 165
Acceptance of return, - - - 134, 167
Acre, measurement of, - - - - - 185
Acts of assembly before revolution, - - - 41
of 1683, - - - 237, 239
1688, - - - - 232
1693, - - - - - 234
1699, - - - - 186
1700, - - - 42, 43, 179, 187, 235
1705, - - 44, 210, 235, 249, 250
1710, - - - - - 237
1711, - - - - 42, 179
1712, - - - - 185, 210
28th May 1715, - 236, 240, 243, 247, 249
1724, - - - - - 210
27th November 1755, - - 210
15th February 1769, - - - 42
18th March 1775, - - - 247
Devesting act, 1779, - - 66, 197
1st March 1780, - - - 222
9th April 1781, - - 70, 120, 161, 172, 200
June 1781, - - - - 72
13th March 1782, - - - 73
27th March 1782, - - - 211
5th April 1782, - - 73, 112, 174
1st April 1784, - - 74, 153, 163
21st December 1784, - - 77, 78, 81
25th March 1785, - - - 211
8th April 1785, - - 82, 124, 129, 193, 194
26th March 1785, - - - 89

Acts of assembly of 16th September 1785, - - - 161
11th September 1786, - - 211
30th December 1786, - - 90, 111, 139, 143
8th January 1791, - - 111, 124, 173
24th March 1791, - - - 216
3d April 1792, - 91, 111, 124, 142, 146, 161
6th March 1793, - - - 194
4th September 1793, - - - 132
22d April 1794, - - - - 96
22d September 1794, - - 97, 138, 143
17th April 1795, - - - 211
1st April 1796, - - - 211
11th April 1799, - - - 211, 216
22d January 1802, - - - 173
2d April 1802, - - - 194
3d April 1802, - - - 103
6th February 1804, - - - 173
3d April 1804, - 107, 211, 213, 216, 217
4th April 1805, - - - - 120
27th January 1806, - - - 194
28th March 1806, - - - 108
4th April 1809, - - - 216
20th March 1811, - - - 110
2d April 1811, - - - 183
7th February 1812, - - - 142
22d March 1813, - - - 110
14th March 1814, - - - 97
28th March 1814, - - 97, 143, 163
13th March 1815, - 211, 217, 218, 219
10th March 1817, - - 97, 142, 152
13th March 1817, - - 183, 218
24th March 1817, - - - 222
6th April 1830, - - - - 183
3d May 1832, - - - 125
9th April 1833, - - - - 111
10th April 1835, - - - 162
Actual settler. See Settlement.
Allowance of six per cent, - - - - 184
under act of 3d April 1792, - 99 to 111
Allen's case, - - - - - 35
Albany, purchase at, - - - - - 31
Affidavit of applicant, - - - - 152, 153, 163
Andros, - - - - - 21, 22, 23

Applicant's oath, - - - - 152, 153, 163
Application system, - - - - - 55
ended, - - - - 64
Appropriated lands, - - - - - 153
Attainder, lands vested by, - - - - 153

Blunston's license, - - - - - 45
Blue Anchor, - - - - - 229
Board of property, - - - - 70, 73, 168
history of, - - - - 170
jurisdiction, - - - - 172
decision by, - - - - 174, 175
proceedings of, where evidence, - - 177
Boundaries of the province, - - - - 25
Braddock's defeat, - - - - 31, 54
Burlington, - - - - - - 224

Cabot's voyage, - - - - - - 17
Campanius, - - - - - - 257
Cantwell, deputy surveyor before Penn's arrival, - - 22
Carr, expedition of, - - - - - 19
Caveats, - - - - - 171, 173, 176
Certificate of improver, - - - 75, 153, 163
Chancery principles, - - - - - 164
Charter boundaries, - - - - - 25
Chattels, when titles were, - - - - 50, 150
Christina, - - - - - - 224, 254
Collin, Dr, - - - - - - 258
Commonwealth, showing title out of, - - - 202
Commissioners of property, - - - - 35, 168
Compensation for roads, - - - - 185
Concessions by William Penn, - - - 25, 224, 229
Conestoga manor, - - - - - 197
Conveyancing, origin of Pennsylvania, - - - 237
Covenants under act 1715, - - - - 245

Deeds, forms and acknowledgements, and recording of, - - 230
Delaware river, discovery and settlement of, - 17, 191, 253
islands in, - - - - 26, 191, 193
Deputy surveyors, before Penn, - - - 22
duties of, - - - 36, 121 to 135
instructions to, - - 37, 60, 123, 125, 129
Depositions before board of property, - - 177, 178

Depreciation and Donation lands, - - - 73, 82, 92
Descriptive warrant, - - - - 116, 133
De Vries, - - - - - - 17, 253
Devesting act, - - - - - - 66
Dungan's deed, - - - - - 28, 30
Dutch titles, - - - - - 17, 19, 21, 23

Easton, treaty at, - - - - - 31
English titles before Penn, - - - 17, 19, 21, 23
Equitable titles, - - - - - 150, 164
Erie county, - - - - - 32
lake, triangular tract on, - - - - 91, 96
Escheat, - - - - - - 153, 173
Executors and administrators, title to lands in, - - 50, 150

Fair play men, - - - - - - 77
Feoffment, - - - - - 236, 242
First purchasers, - - - - - 23, 24, 225
Fine for alienation, - - - - - 158
Forfeiture of warrant, - - - - - 60, 113
lands vested by, - - - - 153
Fort Stanwix, - - - - - - 31, 78
M'Intosh, - - - - - 32
Greenville, - - - - - - 98, 101
Fraud in taking out warrants, - - - - 152

Gilbert's, manor of, - - - - - 197
Great law, - - - - - - 25, 230

Harman, deputy surveyor, - - - - - 22
Harmer, general, - - - - - 98
Highlands, - - - - - - 197
Holland Land Company, - - - - 97 to 108
Hudson, discovery of Delaware by, - - - - 17, 253

Improvement. See Settlement.
interest on, - - - - 58, 146, 153, 163
certificate, - - - - 75, 153, 163
Inchoate rights, - - - - 150, 166
Indian purchases, - - - - - 27, 32
hostilities, - - - - - 31
lands not purchased, - - - - 33, 42, 153
Indorsement on list of lands applied for, - - - 59

Interest on improvements, - - - 58, 146, 153, 163
Instructions of 1701, - - - 37, 123, 125, 264
1765, - - - 37, 60, 75, 123, 125, 129, 267
Irregular titles, under Penn, - - - - 36
after his death, - - - 40, 41, 42, 51, 52, 62
ended, - - - - - 52
Islands, - - - - - 26, 153, 191

Kieft, Dutch governor of New Amsterdam, - - 21

Laches in pursuit of claim, - - - 131, 133, 139, 148, 164
Land office, under William Penn, - - - 35, 42
how far shut, - - - - - 40
during the war, - - - - 70
afterwards, - - - - - 70, 168
Laws agreed upon in England, - - - - 25, 230
Lease and release, by William Penn, - - - 24
Liberty lands, - - - - - 25, 226
Limitation act of 1705, - - - - - 44
1729, 1730, - - - - 43
26th March 1785, - - - - 89
none against commonwealth, - - 142, 154
Lien for purchase-money, - - - - - 157
Location, term used, - - - - - 56, 62
book of, - - - - - 62
defined, - - - - - 72
lottery, - - - - - 62
where embraced, - - - - 89
descriptive, - - - - - 116
vague or indescriptive, - - - 117
shifted, - - - - - 118
nature of, - - - - - 150
Lottery locations, - - - - - 62
scheme and titles, - - - 47
Logan, - - - - - - - 39, 40
Lycoming creek, - - - - - 77, 79

Manors, - - - - - - 153, 195
amount of lands in 1740, - - - - 197
Markham, - - - - - - 27
Maryland, - - - - - - 25
Marks on the ground of survey, - - - 125
Mey, - - - - - - - 17, 253

Military surveys, - - - - - 63
Minuit, - - - - - 18, 254
Mortgages, recording of, - - - - 249
effect of, - - - - - 251

Nature of property under warrants, &c., - - - 150
Newcastle, - - - - - - 224
New York, government here, - - - - 19
titles under, - - - - 21
surrender by, - - - - - 21
surveyors under, - - - - 21, 22
confirmation of titles under, - - - 23
Nichols, governor of New York, - - - 19

Oath by applicant, - - - - 152, 153, 163, 277
Occupancy, - - - - - 141, 154
Order of survey, - - - - - 56
Ownership in name of another, - - - - 59

Patents, Dutch, - - - - - 21
confirmation of, - - - - 23, 35
form, - - - - 39, 71, 150, 155
effect of, - - - - 150, 155, 156
evidence, - - - - - 156, 166
tenure inserted in, - - - 199, 200
relation back, - - - - 166
Penn, Thomas, arrival of, - - - - - 29, 45
purchase by, - - - - 29
statements of, - - - 137, 160, 190
titles under, - - - - 45
William, surrender to, - - - - 19
purchases from the Indians, - - 27
arrivals and departures, - - - 33, 35
death, - - - - - 38
will, - - - - - 38
sale to crown, - - - - 38
chancery suit, - - - - 38
mortgage, - - - - 39
plan of city of Philadelphia, - - - 224
second visit, - - - - 226
colonization previous to, - - - 254
principles of colonization, - - 263
Philadelphia, its foundation and plan, - - - 224

Philadelphia streets, - - - - - 227, 229
lots, - - - - - 228
Pennsbury manor, - - - - - 197
Penny pot-house, - - - - - 229
Peters, secretary, - - - - 41, 51, 52, 58
Pine creek, - - - - - - 77
Possession, extent of settler's, - - - - 144
effect of, - - - - 162, 166, 167
Philadelphia, site of, - - - - - 18, 28
lands adjoining, - - - - 153
Printz, governor, - - - - - 18, 20, 255
Prices of lands, - - - - - 157, 273
Proprietary, title by consent of, - - - - 37
conditions and forfeitures to, - - 35, 43, 49, 60
title devested, - - - - 66
paid, - - - - - 68, 69
Purchase from Indians, - - - - 27, 61, 64
at Albany, - - - - - 31
Easton, - - - - - 31
Fort Stanwix, - - - - - 31
M'Intosh, - - - - - 32
Purchase-money when paid on warrant, &c. - - 37, 93, 97
application, - - 56
lien, - - - - 155, 161
not a personal charge, - - - 161
discharged, - - - - 155
arrears of, - - - - 160
modes of compelling payment of, - - 161
non-payment, - - - 163
when defalked, - - - - 163
interest on, - - - - 163

Quit-rents, under Duke of York, - - - - 21
part of consideration, - - - 37
computation of, - - - 57, 58
abolished, - - - - - 68
effect of, - - - - - 158
account of, - - - - 189

Recording acts, - - - - - - 230
Relation of patent, - - - - - 156
Register of deeds, - - - - 25, 230, 236
bonds, &c. - - - - 231, 233

Rents, - - - - 189, 190, 201, 228
Reservations in 1769, - - - - - 63
Residence, - - - 140
Residence, continuation of, - - - - 141, 148
Return of survey, - - - - - 132
Risingh, - - - - - - 19, 20, 258
Rivers, - - - - - - 191
Roads, six per cent allowance for, - - - 184

Settlement right under William Penn, - - - 35
after his death, - - - 43
preference to, - - - - 47
proclamation as to, - - - 49
allowed, - - - - - 57, 58
interest on, - - - - 59, 75
three hundred acres, - - - 56, 59
in book of locations, - - - 62
by permission of commanding officers, - - 62
in 1768, - - - 9, 63, 79, 90
under act of 1792, - - - 93, 96, 111
defined, - - - - 90
four hundred acres, - - - 90, 93
title by, - - - - 136
on what lands, - - - - 138
what constitutes, - - - 139
residence, - - - - 140
quantity authorized, - - 56, 59, 90, 93, 143
necessity of survey, - - - 145
interest on, - - - - 146
abandonment of, - - - - 147
extent, how concluded, - - - 149
estimate of number, - - - 137
continued, - - - - 148
raising grain, - - - - 142
by a tenant, - - - - 140
by minor son, - - - - 140
Shifted warrant, - - - - - 116, 133
Shippen, - - - - - - 39
Showing title out of the commonwealth, - - - 202
Sinnemahoning, forks of, - - - - - 87
Six per cent for roads, - - - - 184
Springetsbury, - - - - - - 45, 197
Springtown, - - - - - 197

Statute. See Acts of Assembly.
33 Edward I., - - - - - 185
Streeper's tract, - - - - - 97
Streets, - - - - - - 187
Struck district, - - - - - 73
Stuyvesant, expedition of, - - - - 19
grants by, - - - - 21
Surveyors, instructions to, - - - 57, 58, 75
act of assembly regulating, - 83, 86, 87, 88, 93, 111
Survey without warrant, - - - - - 51, 52
on warrant, descriptive, &c., - - 117, 118, 119
treated of, - - - - - 121
must be by warrant, &c., - - - 120
possession without, - - - - 122
duty of grantee to have it made, - - - 122
before warrant, - - - - - 124
how made, - - - - - 125
chamber, - - - - - 125
marking lines on, - - - - 126
presumed, - - - - 127, 128
notching or blazing, - - - - 128
blocks of, - - - - - 128
by whom made, - - - - 129
change of, - - - - - 130
laches on, - - - - - 131
field notes, - - - - - 131
return of, - - - - - 132
accepted or rejected, - - - - 135
effect of, - - - - - 135, 136
of settlement right, - - - - - 149
surplus, - - - - - 179
six per cent on for roads, - - - - 184
Surplus land, - - - - - 88, 179
ten per cent, - - - - 179
Surveys, instructions for, 1701, - - 37, 123, 125, 264
1765, - - 37, 60, 75, 125, 129, 267
Swedish settlements, - - - - 17, 253
titles, - - - - - 19

Taminent, his deed, - - - - - 28
Tax sales, history of, - - - - - 208
present laws, - - - - - 211
Tenant of settler, - - - - - 140

Tenants in common, - - - - - 151
Ten per cent surplus, - - - - - 179
Tenures, - - - - - - 198
Tiadaghton, - - - - - 77, 78
Titles under the Swedes, - - - - 20, 253
under the Dutch, - - - - 21
English before Penn, - - - - 21, 23
to first purchasers, - - - - 23
under William Penn, - - - - 33
from 1718 to 1732, - - - - 38
under T. Penn, - - - - - 45
in 1769, - - - - - 55
from 1779 to 1784, - - - - - 70
by act of 3d April 1792, - - - - 91
Torhellas, - - - - - - 257

Unseated lands, - - - - - 208

Vacant land, - - - - - 75, 152, 153, 163
Vague warrant, - - - - - 116, 133
Vincent's, - - - - - - 197
Virginia, - - - - - - 25, 276

Walking purchase, - - - - - - 28
Warrant and survey, before Penn, - - - - 22
after Penn, - - - 33, 34
Warrant, described, - - - - - 36
form, - - - - 39, 41, 112, 280
of acceptance, - - - - 52, 57, 112, 114
resumed after application, - - - - 64
for land joining improvement, - - - 58
under act 1792, - - - 97, 110, 111, 146
certificate for, - - - - - 75
vacating, - - - - - 113, 114
forfeiture of, - - - - - 113
signed, - - - - - 114
descriptive, - - - - - 116, 133
vague, loose, or indescriptive, - - - 117, 133
shifted, - - - - - 118, 133
construction of, - - - - - 119
filed with surveyor, - - - - 122
registry by surveyor, - - - - - 123

Warrant, without survey, - - - - - 150
tenants in common of, - - - - 151
affidavits on taking out, - - - - 152, 277
when chattel, - - - - - 150
Water street, - - - - - 228

THE END.

74

NEW LAW PUBLICATIONS.

KAY & BROTHER, 122 Chestnut Street, Philadelphia, and JOHN I. KAY & CO., Pittsburgh, have just published the following Valuable Law Works.

CHIEF JUSTICE MARSHALL'S DECISIONS.

In two large volumes, royal octavo, beautifully printed, and bound in calf.

Reports of Cases decided by the Hon. John Marshall, in the Circuit Court of the United States. By John W. Brockenbrough, Counsellor at Law.

These volumes embrace the selected decisions of that eminent individual from the commencement to the end of his long judicial life, comprehending a period of more than thirty years. The opinions, themselves, were all written out by the late Chief Justice himself, and are marked in a most eminent degree by the well-known research and ability of their author. They embrace adjudications on questions of every description included within the extended circle of the jurisdiction of our Federal Courts, on the Common Law, the statute law of Virginia and the Federal Government, on cases in Admiralty, on questions involving the interpretation of the Constitution of the United States, and on the general principles of Equity.

It may be safely asserted, that the cases embraced in this collection are, each and every one of them, interesting, valuable and important. The work contains nearly one hundred cases, the greater portion of which are Equity decisions.

MILES'S REPORTS, VOL. I.

Reports of Cases determined in the District Court of the City and County of Philadelphia. By John Miles, Counsellor at Law.

Extract from the Preface.—"The comprehensive jurisdiction of the District Court for the City and County or Philadelphia, the great number of cases therein determined, and the many important questions constantly submitted to the adjudication of the three law judges under whose administration it is conducted, have induced this publication. Of the many cases finally settled in this court, only such are reported, as, from their novelty and interesting character, are likely to prove useful to the profession. Matters of *practice* are of daily occurrence, and it is obvious, from the extent of its business, that here a general and consistent system of practice under the new Civil Code must be first settled. For these reasons, these Reports are intended to be continued as occasion may require. Several cases of the old District Court have been annexed; as well as an Appendix, containing a Digest of the Acts of Assembly relating to the Court, and of its Rules, revised in October 1836."

The patronage which this work has received from the bar of the state has been very encouraging. Some copies, however, are still on hand, for which orders are respectfully requested. It is conceived that in the practice of the inferior courts it must be so important an adjuvant, as to claim admission into every law library of any pretensions.

Price, handsomely bound in calf, double titles, five dollars.

PARKE AND JOHNSON'S DIGEST OF THE LAWS OF PENNSYLVANIA.

A Digest of the Revised Code and Acts, passed by the Legislature between the 7th day of April 1830 and the 16th day of June 1836, forming, with Purdon's Digest of 1830, a complete Digest of the Laws of Pennsylvania to the present time.

Complete in one large volume, octavo, of nearly 1000 pages. The work is also published in two separate volumes. Those having the first volume can obtain the second of the publishers.